Oct. 28. 1874. 20-421 Ridgway

Argued Strong

N. R.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~313.~~ 421

THE SHIP BELLE OF THE SEA, ARTHUR SPEAR, MASTER AND CLAIMANT, ETC., APPELLANT,

vs.

HENRY W. JOHNSON AND ANDREW F. HIGGINS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED DECEMBER 3, 1872.

Oct 7 1874

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SUPREME COURT OF THE UNITED STATES.

No. 313.

THE SHIP BELLE OF THE SEA, ARTHUR SPEAR, MASTER AND CLAIMANT, ETC., APPELLANT,

vs.

HENRY W. JOHNSON AND ANDREW F. HIGGINS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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a Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit of April session 1871, No. 3.

Inter alia it is thus contained:

Be it remembered that on the eighth day of April, anno Domini one thousand eight hundred and seventy-one, the proctors for the respective parties come into our said court here and filed the record of the D. C. U. S. E. D. Pa., which, being read, is as follows, to wit:

b In the circuit court of the United States for the eastern district of Pennsylvania. In admiralty. No. 3. April, 1871.

Appeal from the decree of the district court of the United States for the eastern district of Pennsylvania. In admiralty. Bottomry.

JOHNSON & HIGGINS, LIBELLANTS,
v.
SHIP BELLE OF THE SEA AND OWNERS, RESPONDENTS. } Record.

Samuel C. Perkins, proctor and of counsel for libellants; Henry Flanders, proctor and of counsel for respondents.

1 I.

In the district court of the United States for the eastern district of Pennsylvania. In admiralty.

II.

HENRY W. JOHNSON AND ANDREW FOSTER Higgins, late trading as Johnson & Higgins, libellants,
v.
THE SHIP BELLE OF THE SEA, WHEREOF George W. Hammond now is or late was master, and Arthur Spear, master, claimant for Joseph Nickerson, Nathan F. Sears, William H. Randall, and William A. Nickerson, late copartners as Joseph Nickerson & Co., and Ambrose Snow and Joseph S. Burgess, copartners as Snow & Burgess, owners, respondents. } 1868. No. 23.

III.

Process, service, and stipulations.

U. S. district court. In admiralty.

HENRY W. JOHNSON AND ANDREW FOSTER Higgins, trading as the firm of Johnson & Higgins,
v.
THE SHIP BELLE OF THE SEA, WHEREOF George W. Hammond now is or late was master. } 23. Of 1868

UNITED STATES,
Eastern District of Penn'a, sct.:

{ SEAL D. C. U. S. E. D. OF PA. } John Cadwalader, judge of the district court of the United States in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting:

2 You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the ship or vessel called the Belle of the Sea, whereof George Woodbury Hammond now is or late was master, together with all and singular her tackle, apparel, and furniture, as the same now are, and the same safely keep to abide the final order and decree of this court in a certain plea, civil and maritime, herein prosecuted against the said ship Belle of the Sea, &c., by Henry W. Johnson and Andrew Foster Higgins, trading as the firm of Johnson & Higgins, libellants on bottomry bond, for damages sur contract, &c. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said George Woodbury Hammond, and generally all others herein concerned, so that they be and appear before me, at a special session of this court to be holden at the room of the district court of the United States, in the city of Philadelphia, on the twelfth day of June next, at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said ship Belle of the Sea, &c., should not be condemned, &c., for the payment of the said damages, &c., &c. And have you then there this writ.

Given under the seal of the said court, at Philadelphia, this twenty-third day of May, A. D. 1868, and in the ninety-second year of the Independence of the United States.

CHARLES S. LINCOLN,
Pro Clerk District Court U. S.

(Endorsed:) May 23, 1868. As commanded I have attached the ship within described writ, and have the same now in my custody. I also cited the mate of said ship by reading the same to him and by copy. So answers

P. C. ELLMAKER, *U. S. M.*,
Per D. W. C. HANTINE, *Deputy.*

Stipulation.

UNITED STATES,
Eastern District of Penn'a, ss:

On this twenty-third day of May, 1868, and in the ninety-second year of the Independence of the said United States, in open district court of the United States, personally appeared William Krebs and Henry D. Sherrerd, and by stipulation in due course of law acknowledged themselves to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in
3 the sum of two hundred and fifty dollars, to be levied of their and each of their goods and chattels, lands and tenements:

On condition that if the libellants in the above action shall pay all costs which, by the decree, mandate, or practice of the court, they may become liable to pay, then this stipulation to be void and of no effect; otherwise to be and remain in full force and virtue, and execution to is-

sue thereon forthwith for the amount of such costs, at the instance of any person interested as aforesaid.

W'M KREBS. [SEAL.]
HENRY D. SHERRERD. [SEAL.]

Taken, acknowledged, and subscribed this twenty-third day of May, A. D. 1868, in open court.

CHARLES S. LINCOLN,
Pro Clerk District Court.

Stipulation.

UNITED STATES,
Eastern District of Penn'a, ss:

Be it remembered that, at a special district court of the United States holden at Philadelphia, in and for the eastern district of Pennsylvania, on the twenty-third day of May, A. D. 1868, and in the ninety-second year of the Independence of the said United States, before the honorable John Cadwalader, judge of said court, come Arthur Spear, Artemus Partridge, and Samuel P. Pedrick, who, freely and voluntarily submitting themselves to be jointly and severally indebted unto Henry W. Johnson and Andrew Foster Higgins, trading as the firm of Johnson & Higgins, in the sum of seven thousand and five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, of the said Arthur Spear, Artemus Partridge, and Samuel P. Pedrick, to the use of the said Johnson & Higgins:

Upon condition that whereas a suit is now pending in the said court, sur bottomry-bond, &c., wherein the said Johnson & Higgins are the libellants against the ship Belle of the Sea, and the said Arthur Spear, master and bailee for the owners, is the claimant:

Now if the claimant shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged
4 to be paid on his part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

ARTHUR SPEAR. [SEAL.]
A. PARTRIDGE. [SEAL.]
SAM'L P. PEDRICK. [SEAL.]

Taken, acknowledged, and subscribed, in open court, on the day and year above written.

CHARLES S. LINCOLN,
Pro Clerk District Court.

IV.

Libel and exhibits.

To the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania:

The libel of Henry W. Johnson and Andrew Foster Higgins, both of the city and State of New York, copartners under the firm of Johnson & Higgins, doing business in said city as average-adjusters, against

the ship Belle of the Sea, of and belonging to the port of Beverly, in the State of Massachusetts, (whereof George Woodbury Hammond now is or lately was master,) her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a case of bottomry and contract, civil and maritime, alleges as follows:

1, (first.) That, on or about March 18, 1867, the said ship, under the command of her said master, set sail from the port of Calcutta on an intended voyage to the port of New York.

2, (second.) That, in the prosecution of said voyage, the said ship, on or about April 26th, 27th, and 28th, 1867, encountered a severe storm and gales of wind, creating a high sea, and inflicting serious damage upon said ship, causing her to strain and leak badly, and in other ways so injuring her as to make it necessary for her to bear away for the harbor of Port Louis, in the island of Mauritius, in order to refit and repair and to obtain supplies and necessaries to enable said ship to perform her intended voyage to New York.

3, (third.) That the said ship reached the said harbor of Port Louis on or about May 3, 1867, in a damaged and leaky condition, and the said George Woodbury Hammond, being a stranger at said Port Louis, and, being in want of money to pay for the repairs of said ship and fit her for sea, and furnish her with supplies and necessaries to enable her to prosecute her intended voyage, and, having no other means of procuring the same, applied by public advertisement to the mercantile firm of Houdlette & Perkins, of Port Louis aforesaid, for a sum of money with which to pay for the same, and thereupon borrowed from them for that purpose upon the bottomry and hypothecation of the said ship, her cargo, and freight, the sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, Mauritius currency, at and after the rate of thirteen and one-half per cent. maritime premium; and that the said sum was advanced and paid by the said Houdlette & Perkins to the said master, upon the security aforesaid.

4, (fourth.) That thereupon and in consideration of the said advance, and in fulfilment of the agreement of bottomry and hypothecation as aforesaid, he, the said George Woodbury Hammond, the master, did duly make, seal, execute, and deliver unto the said Houdlette & Perkins his certain bond or instrument of bottomry and hypothecation, a copy of which is hereto annexed, bearing date at Port Louis aforesaid the 16th day of July, 1867, duly signed, sealed, and delivered in the presence of two credible witnesses, who have subscribed their names thereto as witnesses of the due execution thereof, wherein and whereby, after reciting the matters hereinbefore stated, he, the said George Woodbury Hammond, the master, did, among other things, covenant, promise, and agree to and with the said Houdlette & Perkins that the said ship should, as soon as practicable after the date of the said bond, sail and depart for New York aforesaid, there to finish the said voyage; and the said master did thereby bind the said ship, her tackle, apparel, and furniture, and also her cargo and freight, to pay unto the said Houdlette & Perkins, their executors, administrators, assigns, or order, or to their endorsees, or to such person or persons as by endorsement in writing thereon they should name, order, appoint, and direct the said sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, Mauritius currency, with the aforesaid maritime premium thereon, within ten days next after the safe arrival of the said ship at New York aforesaid from her said intended voyage, the said payment to be made—both capital and interest—in British gold sover-

eigns, at and after the rate of one British gold sovereign for every five dollars advanced as aforesaid; and by the said bond it was further mutually understood and agreed that in case the said ship and her cargo should be lost, miscarry, or be cast away during the said voyage,
6 then and in such case that the said bottomry-advance, with the aforesaid maritime interest thereon, should not be demanded or recoverable by the said Houdlette & Perkins, their executors, administrators, or assigns, but should cease and determine, and the loss thereby be wholly borne, suffered, and sustained by the said Houdlette & Perkins, their executors, administrators or assigns.

5, (fifth.) That the said sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, Mauritius currency, was so advanced and paid by the said Houdlette & Perkins to the said master for the purposes aforesaid and was necessary therefor; and that the said ship could not have sailed from Port Louis aforesaid if the same had not been so advanced and paid. That the said ship, upon being so repaired and furnished, proceeded on her said intended voyage to the port of New York, where she arrived on or about October 13, 1867.

6, (sixth.) That the said Houdlette & Perkins, by endorsement in writing on said bond, directed the said moneys thereby secured to be paid to the order of Baring Brothers & Co., London, who, by further endorsement thereon in writing, directed the said moneys to be paid to the order of S. G. & G. C. Ward, who, by further endorsement thereon in writing, directed the said moneys to be paid to the libellants.

7, (seventh.) That libellants are, as aforesaid, engaged in business in the said city of New York as average adjusters, and there having been no adjustment made so as to show the respective amounts to be contributed to the payment of the said moneys secured by the said bond by the several persons interested in the said ship, her cargo, and freight, the libellants were applied to by the said several persons so interested to take up the said bond, to advance the amount due thereon, and to receive a transfer thereof to them as their security, and also to pay at New York aforesaid certain claims against the said ship, her cargo, and freight for seamen's wages, pilotage, tonnage, port-charges, care of the said ship and cargo, wharfage, discharging the said ship, necessary repairs and supplies, and other claims, and to become substituted to such claims in the place and stead of the original claimants, and then to make an adjustment between the several interests of the entire amount of such claims due by said ship, freight, and cargo, including the usual and reasonable charges and commissions of libellants.

8, (eighth.) That libellants did thereupon, to wit, on or about October 16, 1867, receive a transfer to themselves by endorsement as aforesaid
of the said bond from the said S. G. & G. C. Ward, to whose
7 hands it had come as aforesaid from said Houdlette & Perkins for collection, and libellants did pay said S. G. & G. C. Ward therefor the sum of forty-six thousand eight hundred and five dollars and thirty-one cents, being the amount then due upon said bond, to wit, the full amount thereof as therein stipulated, in the lawful money of the United States, including the said maritime premium.

9, (ninth.) That libellants have since said last-mentioned date and for the protection of the said bond, and for the interests of all concerned, paid at the city of New York, and thereby become substituted to other claims as aforesaid against the said ship, her cargo, and freight, which, with the reasonable charges and commissions of these libellants and in-

terest on their said advancements and payments, amount to thirteen thousand dollars and upwards.

10, (tenth.) That all sums due libellants for and on account of their said advancements and payments and charges for the interests of the parties concerned in the cargo and freight of said vessel have been wholly paid and discharged, and the larger part of their said advancements and payments for the interests of the owners or parties concerned in said ship have also been paid and discharged; but there is still due these libellants on account of said advancements and payments and charges from said vessel the just and full sum of six thousand three hundred and sixty dollars and nineteen cents, with interest thereon at the rate of seven per cent. per annum from the 31st day of March, 1868.

11, (eleventh.) That the said ship Belle of the Sea is now in the port of Philadelphia, and that all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the ship Belle of the Sea, her tackle, apparel, and furniture, and that all persons lawfully intervening and claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due these libellants, with interest as aforesaid and costs, and that the said ship, her tackle, apparel, and furniture may be condemned to pay the same, and that these libellants may have such other and further relief as in law and justice they may be entitled to receive.

W'M KREBS,
Agent of Johnson & Higgins.

SAMUEL C. PERKINS,
Proctor for Libellants.

8 EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

William Krebs, being duly sworn, says that he is the agent of Henry W. Johnson and Andrew Foster Higgins, copartners under the firm of Johnson & Higgins, who reside in New York; that he has read the foregoing libel, and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

W'M KREBS.

Subscribed and sworn to this 23d day of May, 1868, before me, in open court.

CHARLES S. LINCOLN,
Pro Clerk D. C. U. S.

Bottomry bond.

To all to whom these presents shall come, I, George Woodbury Hammond, mariner, master of the American ship or vessel called the Belle of the Sea, of the burthen of eleven hundred and fifty-two (1,152) tons, or thereabouts, now within the harbor of Port Louis, in the island of Mauritius, send greeting: Whereas I, the said George Woodbury Hammond, master of the said ship Belle of the Sea, having, whilst in the furtherance of a voyage from Calcutta to New York, United States of America, laden with a cargo of sundries, been constrained, through

perils of the sea, to put into this port of Port Louis to repair and refit the said vessel; and whereas I am at this time necessitated to take up, upon the adventure of the said ship and her aforesaid cargo of sundries, as also the freight, the sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, Mauritius currency, for paying the expenses of the repairs of the said vessel in this port of Port Louis, her necessary disbursements, and for fitting her for sea, so as to enable her to resume and prosecute her aforesaid voyage to New York aforesaid; which said sum Messrs. Houdlette and Perkins, of Port Louis aforesaid, merchants, have, at my request, by public advertisement, lent unto me and supplied me with, at and after the rate of one hundred and thirteen dollars and fifty centimes of a dollar, for every one hundred dollars advanced as aforesaid during the voyage of the said vessel from Port Louis to New York aforesaid: Now, therefore, these presents witness that I, the said George Woodbury Hammond, do covenant, promise, and agree to and with the said Messrs. Houdlette and Perkins, by these presents, that the said ship shall, as soon as practicable after the date of these presents, sail and depart for New York aforesaid, there to finish the voyage aforesaid. And I, the said George Woodbury Hammond, for and in consideration of the
9 sum of twenty-nine thousand four hundred and forty-four dollars and five centimes, currency of Mauritius, to me in hand well and truly paid at the sealing and delivery of these presents by the said Messrs. Houdlette and Perkins, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said American ship or vessel called the Belle of the Sea, the tackle, apparel, and furniture of the said vessel, as also the following cargo, now laden on board thereof, namely, nine thousand nine hundred and fifty-nine (9,959) bags linseed, three thousand four hundred and sixty-four (3,464) pockets linseed, two hundred and forty-four (244) bales cowhides, one hundred (100) bales jute, seven hundred and eighty-five (785) bales gunny cloth, thirty-six (36) bags India rubber, one hundred cases castor oil, and twenty-five (25) chests shellac, together with the freight, to pay unto the said Messrs. Houdlette and Perkins, their executors, administrators, assigns, or order, or to their endorsees, or such person or persons as by endorsement in writing thereon they shall name, appoint, order, or direct, the said sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, Mauritius currency, with the aforesaid maritime premium thereon, within ten days next after the safe arrival of the said ship at New York aforesaid from the same intended voyage; the said payment to be made, both in capital and interest, in British gold sovereigns, at and after the rate of one British gold sovereign for every five dollars advanced as aforesaid, any act of Congress to the contrary notwithstanding. And I, the said George Woodbury Hammond, do, by these presents, for myself, my executors, and administrators, further covenant, promise, and agree to and with the said Messrs. Houdlette and Perkins, their executors, administrators, or assigns, that I, the said George Woodbury Hammond, at the time of the sealing and delivery of these presents, am the true and lawful master of the said American ship Belle of the Sea, and have full right, power, and authority to charge and engage the said ship, with her tackle, apparel, furniture, cargo, and freight as aforesaid; and that the said vessel, her cargo, and freight, shall, at all times, after the said voyage, be liable and chargeable for the payment of the said sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, together with the aforesaid maritime premium

thereon, according to the true intent and meaning of these presents; it being expressly understood and covenanted by these presents that the said Messrs. Houdlette and Perkins, their executors, administrators, or assigns, shall have the faculty and privilege of preventing the
10 disembarkation of the cargo of the said vessel herein hypothecated, on the arrival of the said ship at New York aforesaid, until this bottomry-bill be paid, or approved security given for the same.

And lastly, it is hereby mutually understood and agreed upon by and between the respective parties to these presents that, in case the said American ship Belle of the Sea and her aforesaid cargo shall be lost, miscarry, or be cast away during her voyage from Port Louis to New York aforesaid, that then and in that case the said sum of twenty-nine thousand four hundred and forty-four dollars and five centimes of a dollar, with the aforesaid maritime interest thereon, shall not be demanded or be recoverable by the said Messrs. Houdlette and Perkins, their executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne, suffered, and sustained by the said Messrs. Houdlette and Perkins, their executors, administrators, or assigns. And that then and from thenceforth every act, matter, and thing herein mentioned on the part and behalf of the said George Woodbury Hammond shall be void, anything herein contained to the contrary notwithstanding.

In witness whereof the parties to these presents have set their respective hands and seals to four bonds of this tenor and date, (one of which being paid, the others be null and void,) at Port Louis, island of Mauritius aforesaid, this sixteenth day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

GEO. W. HAMMOND. [SEAL.]
HOUDLETTE & PERKINS. [SEAL.]

Signed, sealed, and delivered (being first duly stamped) in the presence of—

W. DURNEY,
Of Port Louis, Notary and Clerk.
E. D. M. HESJARDINES,
Of Port Louis, Attorney and Clerk.

In testimony of the due execution of the foregoing bottomry and respondentia bill in my presence, and in that of the subscribing witnesses thereto.

[SEAL.] THEO'RE BAIRE,
Notary Public.

I hereby certify that the signatures of G. W. Hammond, Houdlette & Perkins, and T. Baire, public notary, are correct. In testimony whereof I have hereunto set my hand and seal this 16th day of July, 1867.

[OFFICIAL SEAL.] NICOLAS PIKE,
United States Consul.

11 (Endorsed:)

Pay to the order of Messrs. Baring Brothers & Co., London.
HOUDLETTE & PERKINS.

Pay to the order of Messrs. S. G. & G. C. Ward, without recourse to us.
London, 17th Aug., 1867.
BARING BROTHERS & CO.

Pay to the order of Johnson & Higgins, without recourse to us or to Baring Brothers & Co.

S. G. & G. C. WARD.

V.

Pleadings of defendants.

To the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania:

And now, Joseph Nickerson & Co., of Boston, in the State of Massachusetts, intervening for their interest in the ship Belle of the Sea, for answer to the libel exhibited to this honorable court by Henry W. Johnson and Andrew Foster Higgins, both of the city and State of New York, trading as Johnson & Higgins, against said ship, say as follows:

First. The said respondents by protestation, not confessing or acknowledging any of the matters and things set forth in the said libel, for plea to the same say that it is a proceeding to enforce payment of an alleged balance of accounts between the libellants and the former owner of said ship; that no credit was given to the ship by the libellants, or payments or advances made on account of the same; that a large portion of the items in the libellants' accounts never were, and under no circumstances could constitute, an implied lien on the ship; that if any such lien existed with regard to another portion of such items, which the respondents deny, it has been waived by the libellants permitting a sale of said ship, and at the same time assuring the purchasers—namely, the respondents—that they claimed no lien against her, but, on the contrary, would have a balance in their hands in favor of the ship or her owners; and the respondents aver that they purchased said ship on the faith of such assurance.

Second. That by reason of the premises it doth not pertain
12 to this honorable court, nor is it within the jurisdiction of this court at al', to enforce the claim of the libellants, nor to call the respondents' ship to judgment in respect to such claims.

Wherefore they pray that this honorable court would be pleased to dismiss the libel aforesaid, and otherwise right and justice administer in the premises.

JOS. NICKERSON & CO.,
By their proctor, HENRY FLANDERS.

SEPT. 15, 1868.

VI.

TESTIMONY ON PART OF LIBELLANTS AND EXHIBITS NOT ANNEXED TO LIBEL.

U. S. D. C., eastern district of Penna. In admiralty.

JOHNSON & HIGGINS
vs.
SHIP BELLE OF THE SEA.

Statement of libellants' account.

Vessel's proportion of the general average as separated, viz:

Proportion of the bond itself..... $31,362 73

$3,796 13, say vessel's share of g. a. column.		
10,809 34, say vessel's charges embraced in p. l. columns, (2.)		
16,757 26, say vessel's charges embraced in owner's column and metalling.		
31,362 73		
Vessel's share of commission thereon		784 07
Disb'ts in New York by order of mortgagee in possession, as per statement		5,547 32
Commission thereon		138 68
Interest on total amount to March 9		1,058 81
Insurances to protect advances as customary		461 86
Ship's proportion of damages to cargo by forced discharge.		197 37
Ship's proportion of adjustment fee and commission, collecting and selling as customary		476 77
Lawyers' fees and costs incurred in defending suit of Stevens, and in preparing libel against ship, withheld at request of parties, say		350 00
		40,277 61
Deduct wages and provisions collected from cargo		1,841 34
		38,536 27
Freight applied		31,103 94
Balance due March 9		7,432 33
Since collected on a policy on the ship by order of E. Kimball, from the International Insurance Co., net collection		1,022 51
Amount claimed, with interest from March 9, 1868		6,409 82

Statement of freight.

Gross freight, per bills of lading		34,012 90
Less freight due from Stevens, (not collected)	551 48	
Less freight's proportion of general average per the adjustment, 2,498 96, amended to	2,422 75	
Less amount commission collecting freight	850 32	3,824 55
		30,188 35
Add:		
Interest obtained on freight-money in hand by loaning on call		607 98
Freight allowed on cargo lost by handling in G. A., being proportion collected from cargo		84 39
General average on freight collected on a policy of E. Kimball's in our hands, being balance after deducting premium note		223 22
Total credit		31,103 94

14 *Johnson & Higgins' account, based on commissioners' original report.*

Ship Belle of the Sea in account with Johnson & Higgins.

DR.

To bottomry-bond		$46,805 31
To disbursements in New York		5,547 32
To insurances on advances, per statement	$376 25	
To insurances on vessel specially subsequently	221 24	
		597 49
To interest on disbursements per adjustment	561 17	
Less proportion thereof falling on ship	351 32	
Balance paid by other interests		209 85
To additional interest paid by cargo to dates of settlement,		116 92
To commissions, per adjustment on bond	1,281 53	
And for collecting general average as amended	687 64	
	1,969 17	
Less entire proportion thereof falling on ship, (which is specially allowed by commissioners,) say 2½ ₰ cent. on proportion of bond	784 06	
2½ ₰ cent. on amount of G. A.	121 17	
	905 23	
Balance paid by other interests of cargo, &c		1,063 94
To commissions on ship's business as fixed by commissioners, 1¼ ₰ cent., on amount of bond due from ship, on New York disbursements, on freight collected, and on collection of general average		1,011 61
To Shope's bill		150 00
To adjusting fee		1,250 00
To one-half of Man & Parsons' fee as allowed		175 00
		56,927 44

CR.

By freight, gross amount received	33,461 42	
By total amount collected from cargo	17,545 48	
By insurances collected	1,245 73	
		52,252 63
		4,674 81
The difference between the commissioners' report and this is composed of freight's proportion of wages and provisions, which is embraced in the $2,422 G. A. on freight, (allowed in one sum by them,) say	212 96	
And freight's proportion of freight made good, also embraced therein	9 76	
		222 72
As reported without interest		$4,897 53

15 *Ship Belle of the Sea in general account current with Johnson & Higgins.*

DR.

To the amount of bond assumed by Johnson & Higgins...	$46,805 31
To insurance to cover advances.....	461 86
To damage to cargo in handling.....	197 37
To ship's proportion of adjusting fee.....	351 77
To commissions as allowed by the commissioners.....	1,011 61
To one-half counsel (Man & Parsons) fees.....	175 00
	$49,002 92

CR.

By the cargo's proportion of bond.....	$13,610 63
By the freight's proportion of bond.....	1,831 95
By the net amount of freight collected, (see commissioners' report,)	25,798 96
By the insurance collected on ship's policy.....	1,022 51
By the amount of wages collected in general average....	1,841 34
By this amount to balance.....	4,897 53
1868.	$49,002 92
Oct. 28. To balance due Johnson & Higgins this date, without interest.....	$4,897 53

	Proportion of amount to be raised at Mauritius.	Proceeds of cargo sold at Mauritius.	Proportion of net amount to be raised by bottomry.	Proportion of commission on bond.	Proportion of interest on bond.	Proportion of insurance to protect advances.	Proportion of allowances for damages to cargo.	Prop'n of wages and provisions as corrected in settlement with cargo.	Proportion of freight made good.	Prop. of W. H. Shope's fee in g. a. adjusting and comm. for collecting. (For items see below.)	Total.	Credit to each shipment for damage by handling.	Net total.	Additional interest to date of payment beyond amount allowed in statement.	Total.
	A. A. col.														
J. S. Farlow & Co	3,281 36	1,054 18	2,227 18	95 00	41 41	25 30	171 37	383 16	17 57	301 03	3,262 02	215 12	3,046 90	29 62	3,076 52
Thomas Rowe & Sons	2,641 10	170 00	2,471 10	69 68	30 37	20 29	137 44	307 31	14 08	241 43	3,291 70	186 87	3,104 83	16 32	3,121 15
Samuel Stevens & Co	535 27	39 77	495 50	14 14	6 16	4 11	27 85	62 28	2 85	48 93	661 82	156 83	504 99	5 53	510 52
Kirkland & Van Sachs	2,615 02	262 58	2,352 44	69 93	30 49	20 10	136 14	304 42	13 95	239 17	3,166 64	271 49	2,895 15	16 14	2,911 29
Huffer, Tael & Co	858 53	138 48	720 05	23 46	10 24	6 60	44 73	100 02	4 58	78 58	988 26	137 53	850 73	6 74	857 47
Cæsar & Pauli	1,366 80	422 90	943 90	38 82	17 77	10 53	71 37	159 57	7 31	125 37	1,374 64	20 37	1,354 27	10 76	1,365 03
Muller & Kruger	2,475 45	.....	2,475 45	63 72	27 76	19 00	128 70	287 77	13 19	226 08	3,241 67	.....	3,241 67	19 37	3,261 04
Joseph R. Busk	1,683 42	110 44	1,572 98	44 44	19 36	12 93	87 60	195 88	8 98	153 90	2,096 07	127 92	1,968 15	10 39	1,978 54
A. B. Sands & Co	330 60	.....	330 60	8 50	3 71	2 54	17 19	38 44	1 76	30 19	432 93	.....	432 93	2 05	434 98
F. H. Delano	14 98	.....	14 98	38	17	12	78	1 74	08	1 37	19 62	.....	19 62	82	20 44
W. Parr	3 24	.....	3 24	08	04	03	17	38	02	29	4 25	.....	4 25	17	4 42
J. Davenport	3 21	.....	3 21	08	04	02	17	37	02	29	4 20	.....	4 20	18	4 38
Cargo: total footings	15,808 98	.....	13,610 63	428 23	187 52	121 57	823 51	1,841 34	84 39	1,446 63	18,543 82	1,116 13	17,427 69	118 09	17,545 78
There is a cr. of interest to cargo embraced in this	.....	Cr. 2,198 35	.....	.....	Cr. 25 35										
And a dr. to cargo of comm. of sales cr. of	.....	.....	.....	Dr. 23 43											
				451 66	162 17										
Vessel: proportion of g. a. column	3,796 13	Making vessel's total share of bond alone													
Vessel: p. l. columns ½ and per cent. on $10,809.34, $3,764.65, and $12,992.61															
Vessel, owners, and metal, $16,757.26		31,362 73	31,362 73	784 07	378 10	240 62	197 37	441 30	20 23	351 77					
Freight	1,831 95	.....	1,831 95	45 80	20 90	14 06	95 25	212 96	9 76	167 31	2,398 99	.....	.....	23 76	2,422 75
			46,805 31	1,281 53	561 17	376 25	1,116 13	2,495 60	114 38	*1,965 71					

The foregoing table is prepared to show exactly what was collected from cargo.
It also indicates the vessel's share of the items in the adjustment, but inasmuch as the account filed specifies exactly which items are varied, and for what reason, no further explanation of vessel is required.

* Composed of average bond and signatures 25 00
" adjustment of general average 1,100 00
" Shope's fee in " " 150 00
" corrected commission 690 71
$1,965 71

17 ANDREW FOSTER HIGGINS, being duly sworn, deposes and says as follows:

I am one of the firm of Johnson & Higgins, the libellants in this case. I reside in the city of New York. Our firm were employed to take up the bottomry-bond on the ship Belle of the Sea, and to adjust the affairs of said ship on her arrival in New York in October, 1867. Our firm are average-adjusters and insurance-brokers. I have been in the business twenty-three years, and my partner about thirty. We were first spoken to about this ship by Mr. E. A. Hammond. It must have been about a month before the ship's arrival. The ship arrived in New York about the 13th of October, 1867. Mr. Hammond stated that the ship Belle of the Sea was mortgaged to him for $25,000, which, with interest and accumulations, amounted to something over $30,000; that the mortgage was long past due, and that on the arrival of the ship he proposed to take possession of her under the authority vested in him by the mortgage; that on the voyage from Calcutta she had met with a disaster, and put into Mauritius in distress; that a bottomry-bond had been given upon the vessel and cargo, amounting to some £6,000 sterling; and that he wanted to place the whole business in our hands, to have the bottomry-bond taken up, and the business of the vessel generally attended to on arrival. He stated that the owner of the vessel, Mr. Kimball, was utterly unable either to pay the mortgage or take up the bond, and that he wanted us generally to protect his interest in the mortgage. The bottomry-bond at that time was in the hands of Samuel G. Ward, the agent of Barings Bros. We agreed with him to transact the business, to take up the bond, and divide one-half of all the commissions that could be earned in the case. Some little time previous to the arrival of the vessel, Mr. Hammond and myself called upon Mr. Ward and informed him of our arrangement, and that we were ready to take up the bond on the arrival of the vessel. Mr. Ward stated that in courtesy he thought the owner of the vessel had the first right to take up the bond; but that in default of his doing so, Mr. Hammond probably had the next best right. He stated that the charterer of the ship, Samuel Stevens, had also been to him, and wanted to take up the bond. On the day after the arrival of the vessel we again waited on Mr. Ward, and offered to take up the bond. In reply he stated that he had written the owner of the vessel, Mr. Kimball, and he felt bound to wait till Wednesday morning for a reply from him. I think on Tuesday afternoon, October 15th, I was addressed by Jewitt,
who was accompanied by Mr. Kimball's son, who stated that Mr.
18 Kimball was seeking to make some arrangement whereby he could take up the bottomry bond upon this vessel and cargo.

(Mr. Flanders objects to any conversations except in the presence of Edward Kimball, s'r, the former owner of the vessel.)

Witness continues: And wished to know if we would furnish the money to do it. I told him that the business was already in our hands from Mr. Hammond, the mortgagee in possession—he had then taken possession of the vessel—and that I did not see how the owner could interfere until he dispossessed Mr. Hammond. He then asked me whether we could not furnish the money to take up the mortgage also. That I declined.

There had appeared in the papers of New York on the day previous an advertisement of another broker, Mr. Richard C. Lovett, stating that the matter was in his hands for adjustment, and requesting parties to call at his office and sign the average bond.

On Wednesday morning, October 16th, we called on Mr. Ward—that

is, Mr. Hammond and myself—to know what his decision was about the bond. He replied that he had not received any reply from Mr. Kimball; that he had consulted his counsel about the rights of the parties, and if at 12 o'clock Mr. Kimball had not taken up the bond, or if he did not take up the bond before 12 o'clock, he would then give us the right to take it up on behalf of Mr. Hammond.

At about 11 o'clock we were called upon by Mr. Edward Kimball, s'r, who was accompanied by one of his sons, I think. I don't know but there were two of them. This was at the office of our firm, 87 & 89 Wall street. We had a first conversation, I think, in our private office, in the presence of Mr. Krebs. Mr. Kimball stated generally that he thought of putting the business of the vessel in our hands. I replied that I noticed he had already placed the business in another adjuster's hands, who had been advertising her. He said, Yes, he had placed it in his hands, but that it could be removed. I then told him that we had made all arrangements with Mr. Hammond to take up the bond, and that at 12 o'clock we expected to get it. I told him that I didn't believe he could raise such an amount of money as that, and I didn't think he could find anybody else who had it ready at a moment's notice to go into that affair, and that I therefore considered that we were pretty certain of the business. He was an old man and dreadfully deaf, and I felt so much embarrassed in speaking to him, parties coming in
19 and out, that at this point I think I invited him into our private office, or retiring-room. The first part of the conversation had taken place in the office, where no one but the partners sit, and in the presence of Mr. Krebs. The retiring-room has a glass partition-door, and I invited Mr. Kimball in there so that I could speak to him without every one else hearing me. Mr. Krebs could hear, I think, what I said through the glass door.

I then stated to Mr. Kimball that as Hammond was then acting as mortgagee in possession, I didn't see that there need be any conflict, for if he could find any one to supply him with money to pay off Mr. Hammond, he would be bound to account for all moneys received by him flowing from the business of the vessel, and told him that I had made an arrangement with Mr. Hammond to divide one-half of the commissions with him. Mr. Kimball stated that he hoped to raise money and pay off Hammond, and that in that event he would expect Hammond to account to him for these commissions. I think he asked me what my charges would be for making up the adjustment; to which I replied that there was no established rule about such things—that the fee would be made in accordance with the trouble in the case. He then expressed his satisfaction, and volunteered to go and tell Mr. Ward that it was agreeable to him that we should take up the bond. I think I told him that we would endeavor to do justice to all parties interested, or something to that effect, and he went away. At 12 o'clock we took up the bond—took an assignment of it from the Wards; and then we went on to manage the business of the vessel, according to the accounts which have been rendered—everything being managed by Mr. E. A. Hammond, personally, in his capacity as mortgagee in possession. We put a man in possession.

I should state also that the same day, before we took up the bond, we were called on by the charterer, Samuel Stevens, who stated that he expected to have taken up the bond if he could have got it, in order to protect himself for advances made to the ship on account of freight-moneys, which he said amounted to $27,500, or thereabouts, and that he had notified all the consignees not to pay the freight to anybody else

but himself. I told him that that process would lock the whole freight-money up in court, and involve the whole thing in litigation, and that I didn't see why his rights couldn't be preserved by letting us collect the freight, and hold it subject to all the rights—the legal rights—of all concerned. He said he thought it could be so done, provided we didn't allow ourselves to prejudice anybody's interest at the expense of another. I told him that it was very desirable that we should all move together, and that if he would lend his aid in having the whole matter amicably settled without litigation, that we would pledge ourselves to act with the strictest impartiality to all parties. He expressed himself as entirely satisfied with such a pledge, and so promised, and thereupon went and notified the consignees that they might pay the freight to us.

About three or four weeks after this interview with Mr. Stevens, we received a written demand from him claiming the whole freight in our hands as his property, and demanding that it be paid over to him. This demand being refused, he commenced suit against us in the State courts. We had in the mean time collected the freight from the consignees. That suit by Stevens against us remained pending until the subsequent settlement of the freight-question between the charterer and Mr. Nickerson, which took place about the 9th day of March, 1868. Between the time of our taking up the bond and the 6th day of January, 1868, a great many people came to us to obtain information as to the position of the vessel and her indebtedness, whose object was to see as to the practicability of letting Mr. Kimball have the money which he required to pay off Mr. Hammond's and also the indebtedness to ourselves; all of whom declined to interfere in the matter.

Without notification to us, on the fourth day of December, 1867, after a brief advertisement, the ship was sold at auction under foreclosure of Mr. Hammond's mortgage; at which sale a notice which is hereto annexed, marked A, was read by the auctioneer. We were informed by a person who took possession, in connection with our man already in possession, that one J. W. Arnold had bought the vessel at such auction-sale. Within a few days thereafter we received a written notice from J. W. Arnold that he demanded that we should apply any balance of freight-moneys in our hands to the liquidation of our account against the vessel. On Saturday, the fourth day of January, 1868, upon returning to the office after an absence, I was told that Mr. Joseph Nickerson, of Boston, had been waiting some time to see me, and would be at Snow & Burgess' office. I sent a messenger to Snow & Burgess' office, saying that I was ready to see Mr. Nickerson; and he replied that he would call and see me on Monday morning. On Monday, about noon, Mr. Nickerson called at the office; stated that he wanted to see the adjustment which we had made in the case of the Belle of the Sea. I accordingly got the adjustment from an insurance company in which it was being examined, and went over all the items in detail with Mr. Nickerson, the same embracing every item which is now embraced in account except those since accrued; I mean the account and statement filed in this case. I further furnished him with every explanation which he required of every item embraced in the account. Mr. N. then requested to take the statement home with him in order that he might study it over and understand it thoroughly, which he did. On Tuesday, the 7th of January, 1868, I found the statement in the office of James Lawson, esq., an adjuster, who stated that it had been sent to him by Snow & Burgess to be thoroughly examined and reported on. Mr. Lawson asked me for an explanation for some items, with which Mr. Law-

son expressed himself satisfied, and returned the statement with a note to Snow & Burgess while I was in his office. At 3½ o'clock, same day, Mr. Snow and Mr. Nickerson waited on me at our office and stated that he had examined the statement, and had got all through his head and thought he understood it perfectly. Mr. H. explained that the statement had been examined by the Atlantic Insurance Company and entirely approved with the exception of the item of the wages and provisions in general average, which item they refused to pay, as stated, in gold, and which would probably be reduced unless further proof could be presented on that subject. Mr. N. and Mr. Snow both then stated that they did not suppose any one would object to the statement. Mr. N. then stated that he had arranged with Hammond to buy the vessel, and it only remained to see what Johnson & Higgins proposed to do. Mr. Higgins then replied that they proposed to have that account settled exactly as presented, but that the exact amount to be paid could not be stated until we had completed the settlements under the vessel policies. I then referred particularly to the very large items still in dispute as to the freight to be credited to the vessel, and stated that inasmuch as Mr. Stevens claimed the whole amount of freight to be due to him, that no progress whatever could be made in bringing the thing to a conclusion until that question was settled. I urged the importance of agreeing to some amicable reference of the question, which Mr. Nickerson assented to, and promised to attend to the moment he returned to Boston. Mr. Hammond then came over into the private office and reproached Mr. Nickerson for keeping him waiting at his attorney's office, and took Mr. N. off with him, as he expressed it, to finish his affairs.

On the 9th of March, 1868, Mr. Nickerson and Mr. Farlow, (representing the entire charter,) called at our office and stated that amicable reference had settled the question of freight in dispute between
22 them, and that they now wanted our account of freights collected, disbursements, &c., in order that they could make a settlement. I furnished them with the account marked B, and a duplicate copy for their use; each took a copy home with him that evening with the intention of making himself entirely familiar with it. The next morning both met at our office again, and after a prolonged discussion of their respective positions towards each other, Mr. Farlow made a proposition to Mr. Nickerson that if he would give him a check for $15,554, and permit him to collect the general average on certain freight-policies, he would be entirely satisfied, and would withdraw all claim against the freight in our hands, which Mr. Nickerson accepted, and drew him a check for the amount on the spot, and on the same day withdrew the suit which had been commenced by the charterers against us. After Mr. Farlow left the office, Mr. Nickerson returned to me and said, You can now apply that freight to your account, and stop the interest to that extent, and after some pleasant chatting left the office. We had then to collect certain amounts due on policies on the vessel in the name of E. Kimball, which we assiduously endeavored to do. Collected one item of $1,022.51, but found the other policies counterbalanced by notes unpaid of E. Kimball, or attached by creditors of his, so that we could not obtain the amount without a suit at law, or giving bonds creating a possible future liability on our part. We offered to Mr. Nickerson to give such bonds, if he in turn would guarantee us, to which proposition he made no reply. Subsequent to this time we repeatedly urged upon Mr. Nickerson the settlement of the balance of account due us, which he neglected to do.

In May, without previous notice to us, we noticed in the paper that

the ship had cleared for Philadelphia, from New York, and thereupon wrote a note to Snow & Burgess demanding an explanation of their breaking their pledge to us that the ship should not be moved from the port without our consent. In reply, Mr. Snow called in person at the office, acknowledged that he was much to blame, but offered in explanation that he really had supposed from what had taken place, and his conversations with Mr. Nickerson, that he either had settled our account, or had come to a perfect understanding with us about it; said that the ship was in Philadelphia; we could still attach her, and if by any chance we failed to catch her, that they would be responsible to us in lieu of the ship. We thereupon, after full notice to Mr. Nickerson and failing to bring him to a settlement, attached the vessel in this suit.

23 All the disbursements and expenses on account of the vessel, after her arrival in New York, were contracted by E. A. Hammond as mortgagee in possession, and paid by us on bills certified by him to be correct, except the disbursements to Porter and Hamilton, ship-keepers, and Shope & Emery, discharging clerks, who were employed by us, and Mr. Nickerson was so expressly informed to that effect by myself and also by Mr. Krebs before he bought the vessel from Mr. Hammond. Mr. Kimball, the former owner, was fully aware of these facts and of Mr. Hammond's agency in conducting the affairs during thewhole time.

Some time in November or December, 1867, we had a libel prepared against said ship, cargo, and freight on the bottomry bond, and held it ready to file at any moment, to protect our interest; and had it not been for the repeated assurances of Mr. Nickerson, after he purchased the vessel, that the matter would be settled amicably, we should have filed this libel long before the vessel actually left New York; and we were also obliged to and actually did employ and pay counsel, whose advice and services were absolutely necessary for the protection of our claim to receive the freight-money and of the owners' rights, that the proper proportion thereof (which was upwards of $19,000) should be applied in relief of the vessel's indebtedness. The amount we paid on this account was $500, of which, according to Statement B, furnished to Mr. Nickerson, $350 was charged as a proportion to the vessel, and $150 as proportion to the freight.

(Mr. Flanders objects to the testimony from pages 6 to 14, both inclusive, as being in great part irrelevant, and as containing conversations between the witness and the former owner or charterer of the ship, on the ground that no admissions or concessions of such persons can bind the present owners of the ship.)

WITNESS. The item of $5,547.32, in Paper B, is composed of various items, paid out by us under order of E. A. Hammond, the mortgagee in possession of the ship, a list of which I hold in my hand, marked C. I have the vouchers for those items. Of the $500 paid to E. A. Hammond, for petty disbursements, $448.75 were for insurances effected by him on the ship while in port, by E. A. Hammond, the mortgagee in possession, and one or two small items; or for $500 paid by him for counsel fees on account of his interest in the ship as mortgagee in possession, he claiming to have disbursed some $600 more than we actually paid him.

(Mr. Flanders objects to any declarations of Mr. Hammond.)

24 WITNESS. The ship's proportion of damages to cargo by forced discharge and her proportion of adjustment fee and commission are the accurate proportions taken from the general-average statement, the same having been settled and approved by all the

underwriters on the vessel and cargo. We have collected nothing on the policies of insurance on the ship, except the $1,022.51, for which credit is given in the statement filed.

Cross-examined by Mr. Flanders:

As I have already stated, I considered myself the agent of Hammond and not of Edmund Kimball, s'r, in the management of the affairs of the ship Belle of the Sea. We took up the bottomry-bond as his agent or, under his instructions, would, perhaps, be more strictly correct.

So far as I know, E. A. Hammond resides in New York City. He has an office there and does business there. I believe him to have money. I think he is in good credit, although largely engaged in stock-operations.

Mr. Kimball transferred to us his policies of insurance on the ship, because he was engaged in endeavors to raise money to free the ship, and was particularly desirous that we might be able to state her indebtedness as small as possible. He represented to us that the amounts due under them would be all collectable. I cannot state from memory what those policies were; but will furnish a list of them. I recollect there were two New York companies, the Phœnix and Manhattan Insurance Companies. I cannot state the amount claimed under the policies—I mean the aggregate amount—accurately. He gave me policies which covered, I think it was, three-fourths of the ship. As near as I can recollect, policies covering five-eighths of the ship were transferred to us, and he gave us also $19,000 of policies on the freight. The amount which would be collectable on the vessel policies were there no deductions for notes or any other liability, would have been on the vessel nearly $16,000, and on freight about $1,400. All that we have collected is $1,022.51.

I do not recall the amount of the Phœnix policy. I have a memorandum from which I can give the amounts which would have been collectable on the policies which Mr. Kimball gave us had it not been for his notes, &c.

The International Insurance Company would have owed about $1,200; the American of Boston would have owed about $2,400; and the Phœnix would have owed about $3,600—all without deduction of premium-notes. These three policies were all that Mr. Kimball gave to us on the vessel, he stating that Mr. Hammond had an insurance on one-half of the ship, which he held for his security. The policies on the freight would have collected, as near I can recollect, $1,410; that's on the policies in Boston; and one of $5,000 in the Manhattan Company of New York. The one of $5,000 would have owed about $360.

The exact date when we first presented any of these policies to the insurance companies for collection I cannot state; but as soon as the underwriters on the cargo got through with the adjustment, the largest of whom was the Atlantic Insurance Company, who also had a policy on half the vessel, we sent it then to Boston to be examined by the insurers there, as the Phœnix Company refused to examine it in New York, and referred it to their agent in Boston, who had taken the insurance. (This was some time after Mr. Nickerson bought the vessel.) I can only tell how long it was after the policies came into our hands before they were presented, by reference to the date of the adjustment. It was finished, I see, by the rough, on the 17th December, 1867, and was probably copied and sent in to the companies about the 20th; required probably two or three weeks for examination there; was delayed

by inability on our part to get vouchers for the wages said to have been in gold, and, I think, was forwarded to Boston some time in February.

As near as I can recollect, the policies came into our hands some time in the latter part of October or 1st of November, 1867. I think we notified the insurance companies as soon as the policies had been transferred to us of that fact. I am sure we notified them that it was proposed that they should be so transferred. We sent a telegram to the insurance companies, saying that Mr. Kimball had placed in our hands policies of insurance as surety for ship's proportion of general average and partial loss, and wished to know if it was all right, or if they would respond to them, or words to that effect. They replied that they presumed the amounts would be paid, less any deduction for what Mr. Kimball was liable to them for premiums. This reply came from Bradford & Folger, on behalf of the Phœnix Insurance Company, as their agents in Boston. This telegram was sent after the policies were actually in our hands; but before Mr. Kimball had really endorsed them. There was no subsequent notification to the companies. In the case of the Phœnix Insurance Company, when we came finally to present the policy, we found that two attachments had been laid against them in the name of Mr. Kimball. I never ascertained the exact amount of those attachments. One was by the China Insurance Company of Boston, for premiums due them, and the other was by Mr. Joseph Nickerson, of
26 Boston; I think for some thousands of dollars—more than enough to cover the whole thing. I am not sure whether we commenced suit against the Phœnix Insurance Company. We threatened to do so, and were going to, but were informed that the counsel of the company would advise them to pay if we would give bonds. We were advised by Mr. Nickerson to negotiate to that effect, and upon notifying Mr. Nickerson and expressing a willingness to give bonds upon his indemnifying us, we received no answer, and have done nothing in the matter since. The company offered to pay us the whole amount, provided we would give these bonds. I think the amount was about $2,300 net, after deducting the premium-notes due them. This was the only company which made the proposition. In the Manhattan Company the premium-notes more than absorbed their liability. We collected the International, and Mr. Nickerson took charge of the other policies, and told me afterwards he had collected them.

The bonds required of us were to protect the Phœnix Insurance Company against the claims of all other parties to this money. I don't think the parties were named. It was a general bond, I think. I never saw it. The amount, as I understood, was some $700, to the best of my recollection.

I am positive I told Mr. Kimball that we were to divide the commissions with Hammond. We did not agree with Mr. Kimball that we would transact the business of the ship for 1¼ per cent. Nothing that could possibly bear that interpretation.

I never had any arrangement with Mr. Kimball of any kind or character. I merely repeated to him what I had arranged with Mr. Hammond. Nothing was said by the Kimballs which bears the slightest relation to any agreement with them in writing. In every instance of disbursement, claimed in the adjustment-account, the items represent the actual amount actually paid by us. I ought to say here that no division of our adjustment-fee is contemplated in any agreement for dividing commissions. There was no concert of action between Mr. Hammond and ourselves in reference to the sale of the ship under the mortgage; on the contrary, the sale was made without any notice to us. On the 7th day of January

Mr. Nickerson told me that he had bought the ship. The ship sailed from New York about the 19th or 20th of May. Mr. Nickerson did not directly enter into any pledge that the vessel should not be moved from New York without our consent.

Q. Did he authorize anybody else, to your knowledge, to give such pledge?

27 A. I inferred that he did, from him personally. The ground of the inference is, that within about a week after writing the note to Snow & Burgess, referred to in my direct examination, in a personal interview with Mr. Nickerson, I mentioned that we had discharged our ship-keeper to save expense, had written the note referred to, to Snow & Burgess, and were content with their assurances that she should not be moved without our consent. I am mistaken as to the reference to my note in my direct examination. The note which I now refer to is a note from us to Snow & Burgess, dated January 22, 1868. I stated to Mr. Nickerson at that time, that Messrs. Snow & Burgess had given assurances that the ship should not be moved without our consent. I think this did not impress Mr. Nickerson, as in reply he only nodded his head, which I understood to mean "all right." He is a man of very few words. Snow & Burgess are merchants in New York, and Mr. Nickerson's agents for the transaction of all ship's business in New York. Mr. Nickerson told me this himself personally. The assurance of Snow & Burgess was an absolute promise on the part of Mr. Snow to me personally, that the ship should not be moved without our consent. When we collected the freight-money it was deposited in our general bank-account. There was no distinct deposit of the freight-money. We drew upon our general funds, to use as our necessities required. The reason why we charge a commission in our account both on the freight itself and also on the general average on the freight, is because the two services are separate and distinct. During the intervals between the purchase by Mr. Nickerson and the sailing of the ship from New York, in reference to our account there were no issues or controversy between us.

Re-examined:

This is a copy of the letter dated January 22, 1868, which we sent to Snow & Burgess, and to which I have referred in my cross-examination. (Copy annexed, marked D.)

The moment Mr. Stevens, the charterer, commenced suit against us for the freight-moneys in our hands which we had collected, we loaned out the whole amount on call, and have credited the exact amount of interest which we received on that account.

Recross-examined:

Mr. Nickerson, to my knowledge, never saw the note of January 22, 1868.

A. F. HIGGINS.

28 Sworn to and subscribed Nov. 10, 1868, at Philadelphia, before
W. GRIER HIBLER,
United States Commissioner.

A.

Johnson & Higgins hereby give notice that the ship Belle of the Sea is subject, and if sold must be sold subject, to the first lien on the said ship of a bottomry bond, and for commissions, seamen's wages, provis-

ions, charges, and expenses on discharging vessel, wharfage, watchmen, adjustment-fees, and other charges, in all amounting to between fifty-five and sixty thousand dollars, covering also the freight and cargo of said ship, on her late voyage from Calcutta to New York, the particulars of which lien, as far as ascertained, can be had at Johnson & Higgins' office, Nos. 87 and 89 Wall street. They are in possession of the vessel.

Dated November 29, 1867.

(Signed) JOHNSON & HIGGINS.

Copy of notice read by auctioneer at sale of ship Belle of the Sea, December 4, 1867.

B.

Ship Belle of the Sea and freight in account with Johnson & Higgins.

DRS.

	Totals.	Proportion to vessel.	Proportion to freight.	
To bottomry bond taken up	$46,805 31	31,345 34	1,832 11	
Disbursements in New York, per account, viz:				
Wages, port-charges, &c., and watching	5,547 32	5,547 32		
Commissions paying above	1,308 81	922 31	45 80	
Interest on same from 1st Oct. to March 7	1,502 52	1,058 81	52 51	
Insurance to protect advances, say on ship and freight's proportion		461 86	14 06	
Damages to cargo allowed in g. a.	1,116 13	197 37	95 25	
Adjustment-fee, surveyor's fees, and commission collecting g. a., per statement	2,114 23	476 77	169 77	
Lawyers' costs and fees	500 00	350 00	150 00	
Amount of freight charged S. Stevens & Sons in account			551 48	
		$40,359 78	$2,910 98	$43,270 76

29 Brought forward, $43,270 76

CRS.

By freight collected	$34,012 90		
Less commissions collecting	850 32		
	33,162 58		
Proportion of freight allowed in g. a., collected from cargo	84 39		
Interest obtained on freight-money by lending same on call 4 months	607 98		
Proportion of wages and provisions collected from cargo	1,841 34		
	$35,696 29	35,696 29	
		$7,574 47	
Less g. a. collected on freight		223 22	
		$7,351 25	

C.

Disbursements: Ship Belle of the Sea.

Cash paid Capt. Hammond and E. A. Hammond for entry fees, &c., at custom-house				$461 00
Cash to mate, wages				201 00
				662 00
Cash paid for pilotage				135 62
" A. Pinner, bedding for person in charge				15 05
" towage				120 00
" running-lines				4 00
" ballast				62 50
" pilotage				5 00
" running lines				2 00
" labor				30 44
" board of wardens				21 00
" W. J. Merry, wages				75 00
" merchants' police				73 00
" Judge Bebee (counsel fees in remutiny of crew)				200 00
" unbending sails, &c				19 00
" wharfage				124 33
" Capt. Hamilton, in charge of vessel				176 12
" stores and stove				28 20
" wages paid crew, C. M. Sawyer		66 95		
" " Frank Anderson		219 90		
" " M. Smith		56 70		
" " W. Bell		33 31		
" " W. Tieser		427 20		
" " J. Seymour		33 65		
" " G. Mason		45 90		
" " F. Anderson		25 00		
" " R. Barrett		54 88		
" " A. Williams		11 70		
" " C. E. Dime		18 95		
" " D. Kelly		15 87		
Carried forward		1,010 01		1,753 26
30 Brought forward		$1,010 01		$1,753 26
Cash paid for wages paid crew, J. Lune		43 15		
" " N. Murdock		58 29		
" " D. Morehouse		83 93		
" " Beaver		139 59		
" " W. J. Merry		127 50		
" " E. A. Hammond, (5 men)		199 63		
		$1,662 10		
Less amounts paid by G. W. Hammond out of moneys given him		40 42		
				$1,621 68
Sam'l Sandys, stevedore				1,084 30
W. Wilson, cooperage				40 00
G. W. Emery, assistant discharging-clerk				80 00

Merchants' police, watching ship	14 62
Rep'g cargo	55 50
G. S. Porter, in charge of ship	285 00
Edmunds, Kirby & Co., coal	7 00
	$4,941 36
Ship's special proportion Shope's bill	100 00
E. A. Hammond, petty disbursements	500 00
	$5,541 36
Telegrams and cartage	5 96
	$5,547 32

D.

JANUARY 22, 1868.

Messrs. SNOW & BURGESS:

GENTLEMEN: As we see no further reason for continuing the expense of Mr. Porter in charge of the Belle of the Sea, for our protection, under the assurances received from you heretofore, and with the understanding that your man is in charge for us as well as Mr. Nickerson, we will pay off Mr. P. and cease that expense from to-day.

Yours, sincerely,

JOHNSON & HIGGINS.

SAMUEL G. WARD, of the city of New York, being duly sworn, deposeth as follows:

1. Were you a member of the firm of S. G. & G. C. Ward, of the city of New York, in October, 1867; and was said firm at that time agents of Baring Brothers & Co., bankers; and did the said firm as such agents hold in their possession, endorsed over so as to be payable to them, a certain bottomry bond on the ship Belle of the Sea, her freight, and cargo, originally executed by the captain of said vessel at Port Louis, in the island of Mauritius?

31 Ans. I was a member of the firm of S. G. & G. C. Ward, of the city of New York, in October, 1867. That firm were at the time agents of Baring Brothers & Co., bankers. That firm did hold, endorsed over so as to be payable to them, a bond of the character described in this interrogatory.

2. What was the precise amount payable under said bond in British gold sovereigns; and when did the same become due; and what was the valuation of British gold sovereigns on that day; and what was the precise amount of said bond, converted at that valuation into American currency?

Ans. The amount of the bond, payable in pounds sterling, was £6,683. It became due three days after the arrival of the vessel, making it, I think, the 16th of October, 1867. The valuation of gold averages on that day was 4.88 in American gold, which bore 43½ per cent. premium in paper currency, and the amount of said bond, converted at that valuation into American paper currency, was $46,805.31.

3. Had your said firm any instructions as to requiring payment of said bond before permitting said vessel to be discharged, or her "bulk to be broken?" If aye, what were these instructions? Were they or

not that the full sum due under said bond should be required to be paid to said firm before you would permit said vessel to be discharged, or her bulk broken; and did or not said firm so require?

Ans. We had no other instructions than that the bond was sent to us for collection in usual course. We did require that the bond should be paid before the vessel was discharged, or her bulk broken.

4. Was said firm of S. G. & G. C. Ward applied to by any person or persons to give a transfer of said bond for any purpose? If so, by whom, and for what purpose?

Ans. I have no personal recollection of being applied to by any person to give a transfer of the bond.

5. Did said firm make such a transfer; and if so, to whom, and for what consideration?

Ans. Our firm did make a transfer to Johnson & Higgins, of the bond mentioned, on receiving from them the sum named in my answer to the second interrogatory as due by the bond.

6. Were your said firm applied to by any other person or persons to transfer said bond to him or them, or to permit said bond to be transferred to any one else? If so, by whom, and under what circumstances, and what was the result of such application so far as you are concerned?

Ans. As I have already stated I have no recollection of any special application by any one; certainly no one else than Johnson & Higgins.

32 7. Is it or is it not a common and usual mercantile transaction to buy and sell, and to transfer by a simple endorsement, "pay to the order of ," such bonds as the one in question; and is or is not such transfer understood to convey to the subsequent holder all rights which existed in the first holder's hands under said bond?

Ans. It is a common and usual mercantile transaction with us when we transfer such bonds, to transfer them by a simple endorsement, "pay to the order of ." I cannot speak of the practice of others. I presume such a transfer is understood to convey to the subsequent holder all rights which existed in the first holder's hands under said bond.

8. Is or is not such a transfer necessary from the banker or banker's agents at the port of destination to enable the cargo to be discharged, the freight collected, and the average adjusted, so that the proper liability of vessel, freight, and cargo may be determined?

Ans. I can't speak as to any general practice. Such a transfer I understand to be necessary, unless the bond is taken up by the owner of the vessel.

Cross-interrogatories:

1. Did or did not Mr. Edmund Kimball, the former owner of the ship Belle of the Sea, call at the office of your firm in New York, in October, 1867, in company with Mr. Higgins, of the firm of Johnson & Higgins, with regard to the bottomry-bond on said ship, together with her freight and cargo? If aye, state whether Mr. Higgins was acting as the agent of Mr. Kimball, in taking an assignment of said bond. State whether you have any knowledge as to the terms upon which Mr. Higgins, acting for Johnson & Higgins, agreed to take an assignment of said bond and adjust the affairs of said ship.

Ans. I have no recollection of any call from Mr. Edmund Kimball, in October, 1867, in company with Mr. Higgins, of the firm of Johnson

& Higgins, at our office. I have no knowledge of the matters inquired of in this interrogatory.

2. When you are asked if the transfer of a bottomry-bond by simple endorsement is or is not understood to carry to the subsequent holder all rights which existed in the first holder's hands under said bond, will you please state by whom it is or is not thus understood? In other words, do you mean to say it is or is not so understood by the courts of law? And do you or do you not mean to give an opinion whether such transfer to an agent of the ship-owner, employed by him for the purpose of taking such transfer, carries with it the same legal
33 consequences as if the transfer had been made by the bond-holder to one who was not an agent of the ship-owner?

Ans. In my answer to the interrogatory having reference to the rights acquired by a subsequent holder, by virtue of the endorsement, I undertook to give simply my own presumption in the matter. I do not pretend to say how it is understood by the courts of law. As to the rest of this interrogatory, I do not undertake to give any opinion.

3. If your answer to the eighth interrogatory is in the affirmative, will you please state what you mean by the word "necessary;" that is, do you mean that the transfer referred to in such interrogatory is indispensably necessary, or merely that it is convenient in the adjustment of the ship's affairs?

Ans. By the word "necessary," in my answer to the eighth interrogatory herein, I mean a transfer is always required by any person who advances the money. The necessity consists in the above requirement being always made.

SAMUEL G. WARD.

Subscribed to and sworn February 10, 1867, at New York, before
SIMON STERN,
S. P. NASH,
Commissioners.

GEORGE CABOT WARD, of the city of New York, being duly sworn, deposeth as follows:

1. Were you a member of the firm of S. G. & G. C. Ward, of the city of New York, in October, 1867; and was said firm at that time agents of Baring Brothers & Co., bankers; and did the said firm, as such agents, hold in their possession, endorsed over so as to be payable to them, a certain bottomry-bond on the ship Belle of the Sea, her freight, and cargo, originally executed by the captain of said vessel at Port Louis, in the island of Mauritius?

Ans. I was a member of the firm of S. G. & G. C. Ward, in October, 1867, and said firm were at that time agents of Baring Brothers & Co., bankers, and said firm, as agents aforesaid, had in their possession, so as to be payable to them, a bottomry-bond on the ship Belle of the Sea, her freight, and cargo, executed by the captain of the vessel at Port Louis, in the island of Mauritius.

2. What was the precise amount payable under said bond in British gold sovereigns; and when did the same become due; and what
34 was the valuation of British gold sovereigns on that day; and what was the precise amount of said bond converted at that valuation into American currency?

Ans. The amount of the bond, payable in pounds sterling, was £6,683; became due three days after the arrival of the vessel, that is, on or about the 16th day of October, 1867. The valuation of gold averages

on that day was 4.88 in American gold, which 43½ per cent. premium in paper currency; and the amount of the bond, therefore, converted at that valuation into American currency, was $46,805.31.

3. Had your said firm any instructions as to requiring payment of said bond before permitting said vessel to be discharged, or her "bulk to be broken?" If aye, what were these instructions? Were they or not that the full sum due under said bond should be required to be paid to said firm before you would permit said vessel to be discharged, or her bulk broken; and did or not said firm so require?

Ans. Acting under general instructions, we required payment of the bond before permitting the vessel to be discharged or her bulk to be broken. We had no special instructions with reference to this particular bond. That is universally our requirement in the case of bottomry-bonds.

4. Was said firm of S. G. & G. C. Ward applied to by any person or persons to give a transfer of said bond for any purpose? If so, by whom, and for what purpose?

Ans. I have no personal recollection of the matters inquired of in this interrogatory.

5. Did said firm make such a transfer; and, if so, to whom, and for what consideration?

Ans. Our firm made a transfer of the bond referred to in this interrogatory to Messrs. Johnson & Higgins, on payment by them of the amount of the bond.

6. Were your said firm applied to by any other person or persons to transfer said bond to him or them, or to permit said bond to be transferred to any one else? If so, by whom, and under what circumstances, and what was the result of such application, so far as you are concerned?

Ans. I have no recollection of any of the matters inquired of in this interrogatory.

7. Is it or is not a common and usual mercantile transaction to buy and sell, and to transfer by a simple indorsement, "pay to the order of ," such bonds as the one in question; and is or is not such transfer understood to convey to the subsequent holder all rights which existed in the holder's hands under said bond?

Ans. To the best of my knowledge and belief, the usual
35 mercantile custom in the case of a transfer of bottomry-bonds, such as the one in question, is to endorse the same, "pay to the order of ," followed by the signature of endorser. I suppose such a transfer conveys to the subsequent holder the rights which existed in the first holder's hands under such a bond.

8. Is or is not such a transfer necessary from the banker or banker's agent at the port of destination, to enable the cargo to be discharged, the freight collected, and the average adjusted, so that the proper liability of vessel, freight, and cargo may be determined?

Ans. As we as banker's agents do not allow the vessel to be discharged or the bulk broken before payment of the bottomry-bond in our hands, I assume that a transfer of the bond is necessary to enable the cargo to be discharged, the freight collected, and the average adjusted.

Cross-interrogatories:

1. Did or did not Mr. Edmund Kimball, the former owner of the ship Belle of the Sea, call at the office of your firm in New York, in October, 1867, in company with Mr. Higgins, of the firm of Johnson & Higgins, with regard to the bottomry-bond on said ship, together with her

freight and cargo? If aye, state whether Mr. Higgins was acting as the agent of Mr. Kimball, in taking an assignment of said bond. State whether you have any knowledge as to the terms upon which Mr. Higgins, acting for Johnson & Higgins, agreed to take an assignment of said bond, and adjust the affairs of said ship.

Ans. I remember that Mr. Edmund Kimball called at the office of our firm in New York in October, 1867, with regard to the bottomry-bond on the ship Bell of the Sea, her freight, and cargo; do not recollect whether Mr. Higgins was with him at the time; do not know whether Mr. Higgins was acting as the agent of Mr. Kimball, and also do not know the terms upon which Mr. Higgins agreed to take the assignment of the bond, and adjust the affairs of the ship.

2. When you are asked if the transfer of a bottomry-bond by simple endorsement is or is not understood to carry to the subsequent holder all rights which existed in the first holder's hands under said bond, will you please state by whom it is or is not thus understood? In other words, do you mean to say it is, or is not so understood by the courts of law? And do you, or do you not, mean to give an opinion whether such transfer to an agent of the ship-owner, employed by him for the purpose of taking such transfer, carries with it the same legal
36 consequences as if the transfer had been made by the bond-holder to one who was not an agent of the ship-owner?

Ans. In stating in answer to the seventh interrogatory herein, that I supposed that the endorsee of such a bond acquired the rights of the endorser, I based that supposition upon my general knowledge of mercantile transactions. I have no judgment of the legal bearings of such a transfer. I did not mean to give an opinion whether such a transfer to an agent of the ship-owner was, or was not, the same thing as a transfer by the bond-holder to one who was not such an agent.

3. If your answer to the eighth interrogatory is in the affirmative, will you please state what you mean by the word "necessary?" That is, do you mean that the transfer referred to in such interrogatory is indispensably necessary, or merely that it is convenient in the adjustment of the ship's affairs?

Ans. As my firm and other bankers' agents do not allow the bulk of the vessel to be broken, or her cargo discharged before payment of the bond in our hands by the owner of the vessel, I therefore presume it to be indispensably necessary to have the bond transferred when not taken up by the ship-owner, for the purpose of having the ship's affairs adjusted.

GEORGE CABOT WARD.

Subscribed to and sworn March 5, 1867, at New York, before
SIMON STERN,
S. P. NASH,
Commissioners.

COLIN MATHESON, of the city of New York, being duly sworn, deposeth as follows:

1. Are you in the employ of Johnson & Higgins? How long have you been so, and in what capacity?

Ans. I am in the employment of Johnson & Higgins as cashier and book-keeper, and have been since June, 1866.

2. Were you present at any interviews between said Johnson & Higgins, or either of them, and Joseph Nickerson, of Boston, in reference to the ship Belle of the Sea, or her affairs? If so, state particularly

all that took place, and who was presetn, and where and when said interviews took place, and what was said.

Ans. I was present at the close of an interview between said Nickerson and Mr. Higgins and a Mr. Farlow. They had been closeted together in Mr. Higgins' private room, and while there some statements were requested of me which showed it was about settling the freight of the Belle
37 of the Sea. After Mr. Farlow had left, and just previous to Mr. Nickerson's leaving, he said to Mr. Higgins, "That account is settled, and the balance can be applied to your account," or words to that effect. I was sitting at my desk in the room next to Mr. Higgins', and Mr. Nickerson in saying this stood between me and Mr. Higgins. Mr. Krebs was in the same room with Mr. Higgins. No one else was present that I remember. This was in the office of Johnson & Higgins, in the afternoon; don't remember the day of the week or month.

3. Do you know any other matter which is or may be material or of advantage to the libellants? If so, state it.

Ans. I do not.

Cross-interrogatories:

1. If your answer to the second interrogatory on behalf of the libellants is in the affirmative, state whether you made any memorandum of the conversation between Mr. Nickerson and Johnson & Higgins in reference to the Belle of the Sea or her affairs. Do you speak of that interview from your present recollection, or from any memorandum you made at the time? Have you or not had any conversation with Johnson & Higgins, or either of them, with regard to the facts or matters referred to in the libellants' interrogatories? If yea, state whether, apart from this conversation, you had any distinct recollection of the matters about which you have been examined.

Ans. I made no memorandum whatever of the conversation between Mr. Nickerson and Johnson & Higgins in reference to the Belle of the Sea or her affairs. I speak of the interview then had from my recollection entirely, and not from any memorandum made at the time. I have had a conversation with Mr. Higgins upon the subject of the Belle of the Sea, and with regard to the facts or matters referred to in the libellants' interrogatories, which conversation took place as follows: On Mr. Higgins' return from Philadelphia, I heard him say to Mr. Krebs, in reply to a question how he got on in the Belle of the Sea case, that Mr. Nickerson had denied ever having said that the balance of freight should be applied to Johnson & Higgins' account. I then told Mr. Higgins that I had overheard the conversation which I referred to in my answer-in-chief. I have a recollection apart from this interview.

COLIN MATHESON.

Subscribed to and sworn February 9, 1869, at New York, before
SIMON STERN,
S. P. NASH,
Commissioners.

38 WILLIAM KREBS, of the city of New York, being duly sworn, deposeth as follows:

1. What is your occupation and residence?

Ans. I am an adjuster of averages, and reside in the city of New York.

2. What is your business connection with Johnson & Higgins, the libellants?

Ans. I am now a member of the firm of Johnson & Higgins; but previous to January 1, 1869, was an adjuster in their employment.

3. State all your knowledge in reference to the placing of settlement of the business relating to the ship Belle of the Sea in the hands of Johnson & Higgins. By whom was the settlement placed in their hands, and when, and where? State all your knowledge in reference to said Johnson & Higgins taking an assignment to themselves of the bottomry-bond on said ship.

Ans. The business was placed in the hands of Johnson & Higgins by E. A. Hammond, who was mortgagee of the ship, and had taken possession of the ship on her arrival. He had before her arrival spoken to Johnson & Higgins about placing the business in their hands, and on her arrival he requested Johnson & Higgins to advance the amount of the bottomry-bond and take an assignment of it. Johnson & Higgins did advance the money to the Barings, or rather to their agents, S. G. & G. C. Ward, in New York, and took from them an assignment of the bond. Mr. Edmund Kimball, the owner of the ship, was cognizant of the business being placed in the hands of Johnson & Higgins, and consented.

4. Had you an interview on behalf of said Johnson & Higgins on or about the 4th day of January, 1868, with Joseph Nickerson, of Boston, Mass., in reference to said ship Belle of the Sea, and her affairs, and the said bottomry-bond and the claims of said Johnson & Higgins against said ship, or on her account? If aye, state fully, minutely, and in detail all that took place at said interview; when, where, and under what circumstances the same took place, and who was present, and what was said and done. And state whether any and what accounts, statements, or memorandums, in relation to said ship Belle of the Sea and her affairs, were produced at said interview; and if aye, state fully and in detail by whom, for what purpose, and under what circumstances each and every such account, statement, and memorandum was so produced, and annex to your answers hereto copies of the same.

Ans. I had such an interview on the 4th of January, 1868, at
39 the office of Johnson & Higgins, in New York City. No one was present at the interview but myself, Mr. Nickerson, and Ambrose Snow, who came in with him, though other persons were in and out of the office during the time of the interview. When Nickerson came in he introduced himself, asked for Mr. Higgins, waited for him a little while, and then asked if I could give him the information he needed about the ship Belle of the Sea. I said I could. I asked him whether he came from Mr. Kimball. He said that he did, and that if on examining the accounts he was satisfied, he intended to buy the ship; that he could make it all right with Mr. Hammond, who held the mortgage, and wanted to know exactly how the accounts stood. I asked him if he had an account which we had rendered to Mr. Kimball. He said he had, and produced it. We went over that account in detail, and I explained to him the nature and details of every item, producing for that purpose the rough draft of the average adjustment and the papers belonging to it, some of which I showed to him; but my explanations were mainly verbal, because I had just completed the adjustment, which I had made myself, and was very familiar with all its details. When I got through he appeared satisfied. He asked about every item, until there was nothing more to ask. Mr. Nickerson himself had the account which was under examination. I annex a copy of it. It would be impracticable to annex all the memoranda and statements which were referred to during the interview.

Witness produces copy of an account, which the commissioners have hereto annexed, marked "B."

Ship Belle of the Sea.

General average on vessel	$5,178 33
Partial loss on vessel	14,024 27
Owners' charges at Mauritius	3,932 53
Owners' portion of re-metalling and their one-third of repairs	10,840 23
Disbursements at N. Y., account freight, wages of crew, &c.	4,755 32
Ship-keeper to Dec. 13th, and lawyer's fee, and for adjusting p. l	710 00
General average on freight	2,498 96
	41,939 64

Amounts to be credited when collected.

Wages and provisions allowed in general average	3,638 40
General average on freight expected to be collected under policies of Stevens & Kimball	2,498 96
Collections under Kimball's policies on three-eighths of the ship, less notes to be deducted thereunder, estimated	4,497 71
Total credit	10,635 07

JOHNSON & HIGGINS,
Per W'M KREBS.

B.—S. S., S. P. N.

NEW YORK, 20*th Dec.*, 1867.

40 5. Were you present at any interview or interviews on or about the 6th and 7th days of January, 1868, between said Johnson & Higgins, or either and which of them, and the said Joseph Nickerson, in reference to said ship Belle of the Sea and her affairs? If aye, state fully, minutely, and in detail, all that took place at each and every of said interviews, when, (stating the day of the week and month and hour of the day,) where, (stating particularly the place,) and under what circumstances and for what purpose each and every such interview took place, and who was present, and what was said and done.

Ans. I was present at parts of interviews between Mr. Nickerson and Mr. Higgins, at the office of Johnson & Higgins, on Monday and Tuesday, the 6th and 7th of January, 1868. On Monday the interview was about noon. Nickerson came in—not sure whether he was alone or not—spoke to Mr. Higgins about the accounts of the Belle of the Sea, and went with him into the private office, and was there some time. I was not present there. When Mr. Nickerson went away he passed through the office where I was, and took away with him the average adjustment. I don't remember anything said of importance. On Tuesday, the 7th, the interview was in the afternoon. Mr. Ambrose Snow came in with him, and went with him into Mr. Higgins' room. I heard nothing of importance before they went in, and was not in the room. The interview ended by Mr. Hammond coming after Nickerson, in a state of impatience, saying he had been waiting for him a long time;

and they two went away together, leaving Mr. Snow with Mr. Higgins. I heard no conversation of Mr. Nickerson of any importance.

6. State whether or not the said Joseph Nickerson was in the habit, when he came to the office of said Johnson & Higgins in reference to said ship Belle of the Sea, of getting the said Johnson & Higgins, or either of them, or yourself, to write down for his own accommodation figures and calculations of his own in reference to said Belle of the Sea and her affairs, and the claims against her on her account, &c. State all your knowledge on this subject.

Ans. Mr. Nickerson did, a number of times in my presence, ask Mr. Higgins and myself to make calculations of what would be the probable result of the settlement of accounts of the Belle of the Sea, and on such occasions we made such calculations for him, and also on such occasions he frequently insisted on our putting down items
41 which he said we could collect from the underwriters on vessel and others, and which on such occasions we would put down, although we told him that they were not collectable.

7. Did or did not the said Nickerson ever state to Mr. Higgins, of the said firm of Johnson & Higgins, in your presence, that they, Johnson & Higgins, or the said Higgins, would get no more from him, Nickerson, and that he, said Higgins, or said Johnson & Higgins, had already got more than his or their pay, or anything to that effect?

Ans. Mr. Nickerson never did in my presence say to Mr. Higgins, of the firm of Johnson & Higgins, that they, Johnson & Higgins, or Mr. Higgins, would get no more from him. Mr. Nickerson, on one occasion, did say in my presence, to Mr. Higgins, that Johnson & Higgins need not be in such a hurry about their money; that they had got about all that they were out of pocket. To which Mr. Higgins replied that that was not so. Mr. Nickerson replied to this that we had got about all the money we had paid out, and the remainder due was for fees, commissions, and interest. To which Mr. Higgins replied that that was as much due as the money advanced.

8. Did or did not said Nickerson ever to you or to said Johnson & Higgins, or either, and which of them, in your presence and hearing, acknowledge or admit the correctness of the claims of said Johnson & Higgins against said Belle of the Sea, or on her account? If aye, state fully, minutely, and in detail, all that took place and was said and done upon any such occasion, and who was present; when and where, and under what circumstances such acknowledgment or admissions took place.

Ans. Mr. Nickerson never to me, nor in my presence, to Messrs. Johnson & Higgins, or either of them, admitted the correctness of the claims of Johnson & Higgins against the Belle of the Sea, as stated; although he never made any specific objections to the same, but frequently stated that after our making certain collections, or attempting to make them, from underwriters, he would settle the accounts; do not remember that any person was present on such occasions. All the interviews referred to took place at the office of Johnson & Higgins during business hours.

9. Do you know any other matter or thing which is or may be material or of advantage to the libellants, Johnson & Higgins, in the above-entitled cause? If aye, state the same fully, minutely, and in detail, as if thereunto specially interrogated.

42 Ans. I do not now remember anything other than I have stated in my answer to the previous interrogatories which may be material or of advantage to the libellants in this cause, except that I have

here a letter which I received on the 20th day of December, 1867, from Mr. J. R. Kimball, the son of Mr. Edmund Kimball, in response to which I sent to Mr. Edmund Kimball the statement which Mr. Nickerson presented to me on January 4th, 1868.

Letter hereto annexed, marked "A."

Ans'd 20 Dec.
Sent memo. asked for.

17 STATE STREET, BOSTON,
Dec. 19, 1867.

Messrs. JOHNSON & HIGGINS:

DEAR SIRS: Will you please send me by return mail some memoranda of footings of adjustment ship Belle of the Sea, and thereby greatly oblige,

Yours, very respectfully,

EDM'D KIMBALL,
By J. R. K.

A.—S. S., S. P. N.

Please address in care of J. R. Kimball, 17 State street.

Cross-interrogatories:

1. Do you know Mr. Edmund Kimball, former owner of the ship Belle of the Sea? Did you see him at the office of Johnson & Higgins, in October, A. D. 1867; or at any time or times after the arrival in New York of said ship in the autumn of that year? Were you present at any conversation between Johnson & Higgins, or either of them, and Mr. Kimball, with regard to the affairs of said ship? Did or did not Johnson & Higgins undertake to adjust the affairs of said ship; and if aye, on what terms?

Ans. I know Mr. Edmund Kimball, former owner of the ship Belle of the Sea, and saw him frequently at the office of Johnson & Higgins, in October, 1867, and saw him frequently after the arrival of the ship in the autumn of that year, and was present at a number of interviews between Mr. Higgins and Mr. Kimball, with reference to the affairs of the ship, and Messrs. Johnson & Higgins did undertake to adjust the affairs of the ship for the usual fees and commissions. The usual commissions would be 2½ per cent. for taking up bond and 2½ per cent. for making collections. One-half of the commissions were to be returned to Mr. Hammond, the mortgagee of the ship, who took possession
43 of her on her arrival. The fees were the usual adjusters' fees, which were dependent as to amount upon the work and trouble involved.

2. Was or was not the statement annexed hereto, and marked A, made out by you and furnished to Mr. Jos. Nickerson? In whose handwriting is the estimate of the general average at the bottom of said statement? Were any bills or claims against the Belle of the Sea presented and paid by Johnson & Higgins after the day of the date of said statement? If aye, furnish a memorandum of such bills and claims, showing when such bills or claims were presented, and when paid.

Ship Belle of the Sea.

General average on vessel	$5,178 33
Partial loss on vessel	14,024 27
Owners' charges at Mauritius	3,932 53
Owners' portion of re-metalling and their one-third of repairs	10,840 23

Disbursements at N. Y., account freight, wages of crew, &c	4,755 32	
Ship-keeper to Dec. 13, and lawyer's fee, and for adjusting p. l	710 00	
General average on freight	2,498 96	
		$41,939 64

Amounts to be credited when collected.

Wages and provision allowed in general average.	3,638 40	
General average on freight expected to be collected under policies of Stevens & Kimball	2,498 96	
Collections under Kimball's policies on three-eighths of the ship, less notes to be deducted thereunder, estimated	4,497 71	
Total credit	10,635 07	

JOHNSON & HIGGINS,
Per W'M KREBS.

NEW YORK, 20*th Dec.*, 1867.

General average on cargo	20,000 00	
		30,635 07
"A."		
Balance to be paid out of freight		11,304 57

(After commissioner in behalf of respondents shows to witness exhibit marked "A" annexed to commission.)

Ans. I did make out statement marked "A," and the same was sent by me to Mr. Edmund Kimball, in Boston, on December 20, in compliance with a letter hereto annexed, marked "A."

The same statement marked "A" was the one produced by Mr. Nickerson at the interview on the 4th of January, 1868, detailed in my answer to the 4th interrogatory-in-chief. From my knowledge of the handwriting of Mr. J. R. Kimball, the son of Mr. Edmund Kimball, 44 I recognize the estimate of the general average at the bottom of the statement to be in his handwriting. There were bills and claims presented and paid by Johnson & Higgins after the day of the date of the statement marked "A," and I shall furnish a memorandum of such bills and claims showing when such bills or claims were presented and paid.

(Witness produces memorandum marked "B," S. P. N., and S. S., which is hereto annexed.)

Disbursements after 20th December, 1867.

1868.		
January 13.	Paid Edmonds, Kirby & Co., 1 ton coal	$7 00
" 23.	Paid Geo. S. Porter, ship-keeper	285 00
	Paid fire insurance	60 00
Febru'y 19.	Paid Mercantile Ins. Co. port-risk pol. of E. A. H	31 25
March 6.	Paid insurance premiums, port-risk	130 00
" 9.	Paid J. E. Parsons, lawyer's fee credited in ac't.	350 00
		863 25

B.—S. S., S P. N

3. Were you present at any time and at what time when Mr. Higgins of the firm of Johnson & Higgins, presented a statement of their claims and credits on account of their adjustment of the affairs of the Belle of the Sea to Mr. Jos. Nickerson? Did or did not Mr. Higgins at the time when such statement was presented to Mr. Nickerson, or at some other time, in your presence and hearing, tell Mr. Nickerson that there were deductions or allowances to be made on the claims or items of charge in said statement? Can you state the nature and amount of such allowances? Did or did not Mr. Nickerson, at the time said statement was presented to him, object to it? Can you state what his objections were? Did or did not Mr. Higgins make a memorandum on the statement he presented to Mr. Nickerson? Was or was not that memorandum a specification of the allowances he was willing to make? If aye, state the amount of those allowances. Did or did not Mr. Nickerson ask Mr. Higgins, in your presence and hearing, how it happened that after representing to him that Johnson & Higgins would have in their hands belonging to the ship some three thousand dollars he now made the ship a debtor to them?

Ans. I was present some time in the month of March, 1868, when Mr. Higgins, of the firm of Johnson & Higgins, presented a state-
45 ment of their claims and credits on account of their adjustment of the affairs of the Belle of the Sea to Mr. Joseph Nickerson. I never, at that or any other time, heard Mr. Higgins say to Mr. Nickerson that there were claims or allowances to be made on the claims or items of charge in said statement. I did, however, on one occasion, subsequent to my seeing Mr. Higgins present the account which forms the subject of this interrogatory, hear Mr. Higgins say, in response to an inquiry from Mr. Nickerson with regard to the items of which I shall now speak, that if Mr. Nickerson would pay the balance of the account he (Mr. Higgins) would allow certain items in the account, that is, the half commissions which were to be given to Mr. Hammond and some charges of cash paid to Mr. Hammond by him, Hammond, said to have been expended on account of the ship, but for which, up to that time, he had not furnished any vouchers, and items of a like character might stand open until Mr. Hammond had settled with Nickerson for some items which he, Nickerson, alleged said Hammond owed him. I do not know the amount of such items, but Mr. Higgins at said time either put them on the account or a piece of paper attached to the same. Mr. Nickerson made no objections within my hearing. I did not see Mr. Higgins make any other memorandum than the one last spoken of, and of the items of the character I have described cannot tell their amount. Mr. Nickerson never in my presence nor hearing asked Mr. Higgins how it happened that after representing to him that Johnson & Higgins would have in their hands belonging to the ship some $3,000 he now made the ship a debtor to them, nor words to that effect.

4. State (and, if necessary, refer to the books of Johnson & Higgins) what amount of money they received, and when they received it, on account of freight due the Belle of the Sea? Also, what amount they received, and at what time, on account of general average from the cargo? Also, what amount they received, and when, on account of insurance on ship and freight? In stating the amount of general average received from the cargo, do you or do you not include the sum of $1,841.34 paid Johnson & Higgins, as general average on account of wages and provisions? Were these several sums you have mentioned all the money Johnson & Higgins received, with which to pay off the indebtedness of the Belle of the Sea?

Ans. The amount of money received by Johnson & Higgins, on account of freight due the Belle of the Sea, is $33,461.42. The freight collected on the 18th, 19th, and 21st days of October, and 1st and 5th days of November, and 15th day of January.

46 The amounts collected are as follows: October 18, 1867, received from J. S. Farlow & Co., $3,685.77 in gold; October 19, 1867, of W. Parr, $5 in gold; October 21, 1867, of Thomas Rowe & Sons, $4,278.02 in gold; October 21, 1867, of A. B. Sands, $202.28 in gold; October 21, 1867, of Huffer, Joel & Co., $1,583.37 in gold; of Cæsar & Pauli, $2,905.32 in gold; October 21, 1867, of J. R. Bush, $6,711.43 in gold, amounting in all to $19,371.91 in gold, which was sold at 1.43¼ in currency, amounting to $27,749.26 in currency, less revenue stamp on sale, of $2.78, leaving a total balance of $27,746.48. November 1, 1867, received from Muller & Kruger, $1,250 in gold; of Kuhland & Von Sachs, $3,000 in gold, amounting in all to $4,252 in gold, which was sold at $1.40¼ in currency, amounting to $5,974.06, less revenue stamp of 60 cents, leaving total balance of $5,973.46. November 5, 1867, received of Kuhland & Von Sachs, $586.44 in gold; of T. H. Delano, same date, $7.80 in gold, amounting in all to $594.24 in gold, which was sold at $1.38¾ in currency, amounting to $824.52. January 15, 1868, received of J. Davenport, $5 in gold, sold at $1.43 in currency, amounting to $7.15 in currency, making a sum total of receipts from October 18, 1867, to January 15, 1869, of $34,551.61. December 11, 1867, there was refunded for short delivery of cargo, the following amounts: to J. Rowe & Sons, $111.11 in gold, sold at $1.43¼ in currency, amounting to $159.16 in currency; to Cæsar & Pauli, same date, $196.37 in gold, sold at $1.43¼ in currency, amounting to $281.30 in currency; to Kuhland & Von Sachs, same date, $28.16 in gold, sold at $1.38¾ in currency, amounting to $39.07 in currency; to Huffer, Joel & Co., same date, $78.91 in gold, sold at $1.43¼ in currency, amounting to $113.03 in currency; to J. S. Farlow & Co., same date, $296.39 in gold, sold at $1.43¼ in currency, amounting to $424.58 in currency; to J. R. Bush, same date, $51 in gold, sold at $1.43¼ in currency, amounting to $73.05 in currency, making the sum total refunded, $1,090.19, which, subtracted from the total receipts, leaves a balance of $33,461.42, being the exact amount collected.

The amount received by Johnson & Higgins, on account of general average on cargo, and interest on the general average on cargo in gross is $19,297.41; but in making the exact settlements with the parties, and returning amounts overpaid, by reason of allowances in general average of proceeds of sale of cargo at Mauritius, there were returned $1,751.63, leaving net amount as received by Johnson & Higgins, on account of general average on cargo, and interest thereon, the sum of $17,545.78.

These payments and repayments were made, as follows:

47 Johnson & Higgins received from the Atlantic Insurance Company, January 22, 1868, on account of general average of Farlow & Co., $1,368.33; from the same company, same date, on account of general average of Kuhland & Von Sachs, $1,722.68: from the same company, same date, on account of general average of J. Rowe & Sons, $3,478.02, amounting in all to $6,569.03.

Received from the Atlantic Insurance Company, January 24, 1868, on account of general average of A. B. Sands & Co., $281.66; from the same company, same date, on account of general average of A. B. Sands again, $153.32, amounting in all to $434.28, being the sum total received on account of general average of A. B. Sands & Co. Received from the Sun Insurance Company, January 24, 1868, on account of general average of Kuhland & Von Sachs, $1,722.68, being the sum total re-

ceived by Johnson & Higgins from the Sun Insurance Company, on account of general average of Kuhland & Von Sachs. Received from the Orient Insurance Company, January 24, 1868, on account of general average of Huffer, Joel & Co., $1,133.48; from same company, same date, on account of general average of Cæsar & Pauli, $1,808.30; from same company, same date, on account of general average of Muller & Kruger, $3,261.04, said three last-mentioned sums amounting in all to $6,202.82, taking from the last-mentioned sum $719.28, being the amount less the proceeds of sales and amounts made good, leaving a balance of $5,483.54.

Received from the Boston Insurance Company, February 6, 1868, on account of general average of J. S. Farlow & Co., $185.76; from S. Stevens & Co., February 6, 1869, $235.71, less premium due company of $34.88, leaving a balance of $200.83; from same company, February 8, 1869, on account of general average of W. Parr, $4.42; from the New England Insurance Company, February, 1869, on account of general average of S. Stevens & Co., $235.70, less premium due company of $34.88, leaving a balance of $200.82; from the Boylston Insurance Company, February 19, 1869, on account of general average of J. S. Farlow & Co., $2,291.18; from the Phœnix Insurance Company, February 20, 1869, on account of general average of S. Stevens & Co., $235.70, less premium due company of $34.89, leaving balance of $200.81; from last-mentioned company, same date, of J. Davenport, $4.38. Deposit for general average from J. R. Bush, $5,000, less returned December 18, 1867, $2,939.91. There was paid on first general average, $2,060.09, less returned February 25, 1869, per amended statement, $81.35, leaving a balance of $1,978.54 on first general average; from F. H. Delano, $30, returned, $9.56, balance left, $20.44. There was paid on January 31, 1868, to Kuhland & Von Sachs, on amounts made good per statement of sales, $534.07; on same date there was paid to J. Rowe & Sons, on amounts made good, $536.87; on February 28, 1868, there was paid to J. S. Farlow & Co., on amounts made good, $1,269.30, less his proportion of general average due by the Mercantile Insurance Company, and paid to J. S. Farlow & Co., $500.55, leaving a balance of $768.75; on March 10, 1869, there was paid to S. Stevens & Co., on amounts made good, $196.60, less premiums deducted by companies, $104.66, leaving a balance of $91.94. Johnson & Higgins collected on the 31st day of March, 1868, from Messrs. Man & Parsons, lawyers, on account of insurance on ship alone by the International Insurance Company, the sum of $1,022.51. Johnson & Higgins also collected, on 29th day of February, 1868, from the Mercantile Insurance Company, of Boston, on account of insurance on freight, $223.22. In stating the amount of general average received from the cargo, I do include the sum of $1,841.34 received by Johnson & Higgins, as general average on account of wages and provisions. The sums I have mentioned were all the money received by Johnson & Higgins, with which to pay off the indebtedness of the Belle of the Sea, her cargo, and freight.

48

5. Do you know any matter or thing which is or may be material or of advantage to the respondents, Jos. Nickerson & Co? If aye, state the same fully, minutely, and in detail.

Ans. That he knows nothing which may be of advantage or material to the respondents other than he has already stated herein.

W'M KREBS.

Subscribed to and sworn, Feb. 15, 1869, at New York, before
SIMON STERN,
S. P. NASH,
Commissioners.

HENRY D. SHERRERD being duly affirmed, says:

I am an underwriter at Philadelphia, and president of The Insurance Company of the State of Pennsylvania; have been an underwriter for 25 years; am familiar with the practice of adjustment in marine insurance. I am chairman of committee on adjustments in the Philadelphia board of marine underwriters; have been chairman for 3 or 4 years.

I have examined the statement of adjustment of general average and specific statement of libellants' claim in this cause.

49 It appears to be correct from the examination I have made, and the different items are carried, as far as I can judge, to the appropriate accounts. They are the usual and ordinary charges which enter into an average adjustment in case of a vessel putting into a port of distress, so far as I have had an opportunity of examining it.

Cross-examined by Mr. Flanders.

I would not, as an underwriter, pay an insurance claim on the examination I have made of this adjustment. I should require the original statement in the vouchers, but not always from an average adjuster there.

By Mr. Perkins.

I know the standing of Johnson & Higgins as average adjusters; I have known them for the last 20 years. The general character of their statements are correct. During that time I have never had occasion to question them. I have had their statements frequently before me. My examination is sufficient to form a general opinion as to its correctness.

By Mr Flanders.

Q. Apart from their character as general adjusters, are you acquainted with their reputation as business men?

Ans. Yes; it is of the very best character. That is, their reputation is, and also, I may add, their business qualifications; none better, I may say.

HENRY D. SHERRERD.

Affirmed to and subscribed at Philadelphia before
MORTON P. HENRY,
JOHN S. YOUNG,
Commissioners.

50

51 VIII.

DEFENDANTS' TESTIMONY.

JOSEPH NICKERSON, of the city of Boston, being duly sworn, deposeth as follows:

1. State whether you are a member of the firm of Joseph Nickerson & Co., merchants, of Boston, Massachusetts? State whether your house are the present owners of the ship Belle of the Sea? State when you

purchased her, of whom, for what sum, and whether such sum has been actually paid in full?

Ans. I answer that I am a member of the firm of Joseph Nickerson & Co. The present house of Joseph Nickerson & Co. are not the owners of the ship Belle of the Sea. The ship was purchased for the old house of that name, consisting of Mr. N. F. Sears and myself. I bought her for the old house January 6, 1868, of J. W. Arnold, for the price of twenty-five thousand dollars, all of which has been paid. On the 4th of May, 1868, I sold to Joseph S. Burgess one-fourth of the vessel, so that she is now owned by Mr. Sears, Mr. Burgess, and myself.

2. State whether the annexed affidavit was subscribed and sworn to by you; and if aye, whether you now repeat and reaffirm the statements therein contained?

Affidavit.

JOSEPH NICKERSON, of the firm of Joseph Nickerson & Co., of Boston, in the State of Massachusetts, on oath deposes and says as follows:

The said house of Joseph Nickerson & Co. are the present owners of the ship Belle of the Sea. Prior to their becoming such owners a public sale of said ship was made in New York, to satisfy a mortgage on her executed by Mr. Edmund Kimball, the former owner; the said mortgage at the time of sale being in the hands of Mr. E. A. Hammond, who held it as assignee; said sale took place in New York some time in the autumn or winter of '67 and '68. Before I purchased said vessel for the house of Joseph Nickerson & Co. I had an interview with Johnson & Higgins, the agents of the former owner, Mr. Edmund Kimball, who had placed the affairs of the ship, arising out of her late voyage, in their hands for settlement. In this interview they assured me that if certain claims of the freighters were paid there would be a balance of some three thousand dollars in their hands belonging to the ship.

52 On this assurance I bought the ship and paid the freighters' claims.

After the house of Joseph Nickerson & Co. had thus become the owners of the ship, they dispatched her to the port of Philadelphia, where she was libelled by the said Johnson & Higgins, and a claim made against her for the sum of sixty-three hundred dollars.

JOS. NICKERSON.

Sworn to and subscribed September 7, 1868, in the city of Boston, before

CHAS. B. F. ADAMS,
Commissioner of Penn'a.

Ans. I answer that the affidavit inquired of was described and sworn to by me, and I now repeat and re-affirm the statements therein contained, with this qualification, that instead of saying that the house of Joseph Nickerson & Co. are the present owners of the ship Belle of the Sea, as I have said in the affidavit, I would say now "that the old house of Joseph Nickerson & Co. and Mr. J. S. Burgess are the present owners."

Cross-interrogatories.

1. What are the names of the individual partners who composed the firm of Joseph Nickerson & Co. at the time said firm purchased the ship Belle of the Sea, and of the individual partners who now compose said firm, and where do such partners reside?

Ans. I answer that Nathan F. Sears, William H. Randall, and William A. Nickerson and myself composed the firm of Joseph Nickerson & Co. at the time of the purchase referred to. The same parties now compose the firm. Mr. Sears now resides at Boston; Mr. Randall at Medford; and Mr. William A. Nickerson and myself at West Roxbury, Massachusetts.

2. In whose handwriting is the affidavit annexed to the interrogatories? When, where, and by whom and for what purpose was it drawn? Annex to your answers the original draft of said affidavit.

Ans. I answer that I drew the original draft of the affidavit, and it was then copied by one of the clerks of the house. It was drawn on the 15th or 17th of September, 1868, at the place of business, 95 Commercial street, Boston; drawn as above stated by me, and copied by one of my clerks, for the purpose of this suit. The draft was made in pencil, and not being retained I cannot annex it to my answer.

3. Was not one or more members of the firm of Joseph Nicker-
53 son & Co., and which one of them, present at the sale of the ship Belle of the Sea at public sale under the mortgage of E. A. Hammond, in the city of New York?

Ans. I answer, no; none of the firm were present at the sale referred to.

4. Did not one or more and all of the members of the said firm of Joseph Nickerson & Co. know, or were not they or some and which of them informed at the time said ship Belle of the Sea was purchased by said firm, that the person or persons from whom she was so purchased by them had bought her at public sale, expressly subject to the claims of libellants against said ship, and after notice publicly given at said sale? If aye, state fully and in detail how and from whom the same was known, or any information relating thereto was received.

Ans. I answer, no; I was aware that the ship was sold at public sale, subject with the freight and cargo to a bottomry bond given for repairs at Mauritius; but I did not know that she was sold subject to any other claims. I never heard that my partner, Mr. Sears, ever knew of any such claims.

5. State fully, minutely, and in detail, all the particulars relating to the purchase of said ship by said firm of Joseph Nickerson & Co.; who was present; how the purchase-money was paid, whether in cash or in notes, or partly in cash and partly in notes, and what arrangement, if any, was by said firm with E. A. Hammond, the mortgagee, for a transfer of his interest or right in the premises to said firm. If any notes were given as part consideration for the purchase of said ship by said Joseph Nickerson & Co., state what notes, give the dates and amounts, and state whether they have all been paid, and if not, why not.

Ans. I answer that I went to New York for the purpose of buying the ship Belle of the Sea, if I could do it with safety. Arrived there on the 4th January, 1868; called at Johnson & Higgins' office; could not find Mr. Higgins; called on Mr. E. A. Hammond—asked him about the ship. He said that she had been sold to one J. W. Arnold, but that I could buy her, or that he thought that I could buy her of Mr. Arnold for $25,000, subject to a bottomry bond; said that the ship belonged to Mr. Arnold; and after some other conversation I said I could see him again on Monday, the 6th January.

On Monday we met and talked over matters; then went to Mr. Donahue's office, where I finally decided to take the ship at $25,000, they to pay their bills, and to allow one-half of the scrip due from the Atlantic Insurance Company. J. W. Arnold, E. A. Hammond,

54 and Ambrose Snow were present. I paid for the ship on the spot, giving J. W. Arnold our Joseph Nickerson & Co.'s check, payable to his order, on the Second National Bank of Boston for $12,500—which check was duly paid in Boston—and two notes signed by Joseph Nickerson & Co., for the balance; one note of $6,000, payable to his, J. W. Arnold's, order in four months from date, with interest at seven per cent., and one for $6,500, payable to his order in four months from date, with seven per cent. interest; both notes were dated January 6, 1868, and were paid when due, with interest as aforesaid.

At the interview with Mr. Hammond, on the day I purchased the ship, I said there were rumors that the ship was bought by Arnold in his inter est. He re-affirmed that the ship was bought by Mr. Arnold at public sale, and belonged to Mr. Arnold; that Mr. Kimball had given his permission for the sale to take place; that everything was legal; but if I wished he would assign his mortgage to me if I bought the ship, so that there could be no question about the title. He thought it was not necessary, but thought it might be, to make the records clear. He said that he had guaranteed the mortgage in his sale to Arnold; so if I bought, he would of course assign the mortgage to me at any time I wished; which was subsequently done, I think some months after.

6. In the affidavit annexed to the interrogatory-in-chief you state, "I had an interview with Johnson & Higgins, the agents of the former owner, Mr. Edmund Kimball, who had placed the affairs of the ship arising out of her last voyage in their hands for settlement. How do you know Johnson & Higgins were the agents of Mr. Edmund Kimball in the matters referred to, and that he had placed the affairs of the ship arising out of her last voyage in their hands for settlement? Do you state this fact of your own knowledge, or is it not stated solely on the information of Mr. Edmund Kimball himself, or of some other person or persons, and who? If you say that it is stated from information derived from others, state when, and where, and under what circumstances, and on what occasion, and for what purpose such information was communicated to you, and who was present and what was said?

Ans. I answer that I knew the ship belonged to Edmund Kimball, and that Johnson & Higgins were Mr. Kimball's agents—first, because Mr. Kimball told me so, and second, because both Mr. Higgins and Mr. Kimball informed me that the latter had indorsed without consideration insurance policies amounting to $4,500 to Messrs. Johnson & Higgins
55 after they had paid the bottomry bond; furthermore, I considered that certain letters of Messrs. Johnson & Higgins (now in my possession) to the insurance offices in November, 1867, disclosed facts which indicated the relation of agency between the parties.

7. By whom was the bill of sale of said ship Belle of the Sea to said firm of Joseph Nickerson & Co. executed, and what was the consideration expressed therein? Annex a copy of said bill of sale to your answers hereto, and also a copy of each and every transfer or instrument of writing for the transfer of any rights or interests of E. A. Hammond in said ship to said firm?

Ans. I answer that J. W. Arnold executed the bill of sale; the consideration named is $25,000; the paper hereto annexed, marked "A," is a true copy of the bill. The paper hereto annexed, marked "B," is the original mortgage, and contains all the transfers of Mr. Hammond's rights or interest in the ship. The original is sent because it is more convenient to do so.

"A."

[Jan. 6, 1868. J. W. A. $25 rev. stamp.]

To all to whom these presents shall come, greeting:

Know ye that I, John W. Arnold, of the city of New York, owner of the ship or vessel called the Belle of the Sea, of the burthen of eleven hundred and fifty-two tons $\frac{98}{100}$ or thereabouts, for and in consideration of the sum of twenty-five thousand dollars lawful money of the United States of America, to me in hand paid before the ensealing and delivery of these presents by Joseph Nickerson, of Boston, in the State of Massachusetts, the receipt whereof I doth hereby acknowledge, and am therewith fully satisfied, contented, and paid, hath bargained and sold, and by these presents doth grant, bargain, and sell unto the said Joseph Nicherson, his heirs, executors, administrators, and assigns, the whole of said ship or vessel, together with the whole of the masts, bowsprit, sails, anchors, cables, boats, and all other necessaries thereunto appertaining and belonging. The certificate of registry of which said ship or vessel is as follows, to wit:

No.

56 In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," James F. Chapman, of Thomaston, of the State of Maine, having taken or subscribed the oath required by the said acts, and having sworn that John W. Arnold, of the city and State of New York, are the owners of the ship or vessel called the Belle of the Sea, of Beverly, whereof Chapman is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Charlestown, in the State of Massachusetts, in the year eighteen hundred and sixty-five, as per register No. 331, issued at the port of Boston, August 12, 1865, now cancelled, property changed.

And said register having certified that the said ship or vessel has two decks and three masts, and that her length is one hundred and seventy-nine feet, her breadth thirty-seven feet, her depth twenty-three feet, and that she measures eleven hundred fifty-two $\frac{98}{100}$ tons, viz: That she is a ship, has a square stern and a figure-head; and the said James F. Chapman having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said ship has been duly registered at the port of New York.

Given under our hands and seals at the port of New York, this 5th day of May, in the year one thousand eight hundred and sixty-eight.

To have and to hold the said ship or vessel and appurtenances thereunto belonging unto him, the said Joseph Nickerson, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said Joseph Nickerson, his executors and administrators and assigns forever, the title being subject to all such liens or encumbrances as it would be in my hands.

In witness whereof I, the said John W. Arnold, hath hereunto set my hand and seal the sixth day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

JOHN W. ARNOLD, [SEAL.]

Signed, sealed, and delivered in the presence of—
C. DONOHUE.

STATE OF NEW YORK,
City and County of New York, ss:

On this 9th day of January, 1868, before me personally came and appeared John W. Arnold, to me known to be the individual described in and who acknowled to me that he executed the same
57 for the uses and purposes therein mentioned.

ARCHIBALD W. HALL,
NOTARY PUBLIC,
NEW YORK.

In witness whereof I have hereunto set my hand and affixed my seal of office the year and day last above written.
A. W. HALL,
Notary Public N. Y. Co.

Endorsed:

Paper marked "A." Ship Belle of the Sea. John W. Arnold to Joseph Nickerson.

Custom-house, New York, received for record and recorded May 5th, 1868, at 12 o'clock m. Book 53, page 29, B. S. of R. V.
SAM'L LEWIS, JR., *R. Clerk.*
G. W. EMLEN, *D. Collector.*

Custom-house, Boston, Feb. 22, 1868. Received for record 12 h. 55 m. p. m. Recorded book 35, page 61.
WM. F. HOLLIS,
Register of Sales and Transfer.

"B."

To all to whom these presents shall come, greeting: Know ye, that I, Edmund Kimball, of Wenham, county of Essex, in the State of Massachusetts, party of the first part, the owner of the whole of the ship or vessel called the Belle of the Sea, of the burden of $1,152\frac{93}{100}$ tons, or thereabouts, for and in consideration of the sum of twenty-five thousand dollars, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents by Andrew W. Hammond, of Haverhill, county of Essex, in the State of Massachusetts, party of the second part, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained, and sold, and by these presents do bargain and sell unto the said party of the second part, his executors, administrators, and assigns, the whole of the said ship or vessel, together with all and singular the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said ship or vessel is as follows, to wit:

No. 331, temporary.

In pursuance of an act of the Congress of the United States of
58 America, entitled "An act concerning the registering and recording of ships or vessels," approved December 31, 1792, and of "An act to regulate the admeasurements of tonnage of ships and vessels of the United States," approved May 6, 1864.

Edmund Kimball, of Wenham, State of Massachusetts, having taken
J. A. Graham, Act. Reg. or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the Belle of the Sea, of Beverly, whereof George W. Hammond is at
J. Z. Giverock, collector. present master, and is a citizen of the United States, as he has sworn, and that the said ship or vessel was built at Charlestown, State of Massachusetts, A. D. 1865, as per certificate of carpenter, Edmund Kimball, dated August 11, 1865, on file at this office.

And Charles A. Phelps, surveyor for this district, having certified that the said ship or vessel has two decks and three masts, and that—

	Feet.	Tenths.		Tons.	Tenths.
Her length is,	179		Udder tonnage-deck,	1,073	67
Her breadth is,	37		Enclosures on upper-deck,	79	31
Her depth is,	23				
And that she measures eleven hundred fifty-two $\frac{98}{100}$				1,152	98

W. L. Walker, dep't naval officer. tons, and that she is a ship, has a square stern and a figure-head; and the said Edmund Kimball having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the ship has been duly registered at the port of Boston.

Given under our hands and seals, at the port of Boston, this twelfth day of August, in the year one thousand eight hundred and sixty-five.

To have and to hold the said ship Belle of the Sea, and appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his executors, administrators, and assigns forever; and the said party of the first part has, and by these presents does promise, covenant, and agree for himself, his heirs, executors, and administrators, to and with the said party of the second part, his heirs, executors, administrators, and assigns, to warrant and defend the said ship Belle of the Sea, and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

59 Provided always, and these presents are upon the express condition, that if the said party of the first part, his executors, administrators, or assigns shall well and truly pay unto the said party of the second part, within twelve months from the date of these presents, the just and full sum of twenty-five thousond dollars, ($25,000,) with interest thereon, payable semi-annually, at the rate of six per cent. per annum from the date hereof, then, and in that case, these presents shall cease, determine, and be void. And the said party of the first part, for himself, his executors, and administrators, does covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, as above mentioned and expressed.

And in case default shall be made in any of the matters aforesaid, in manner and form as above provided, then and thenceforth it shall be lawful for, and the said party of the first part does hereby authorize and empower the said party of the second part, his executors, adminise trators, and assigns, with the aid and assistance of any person or persons, to enter into and upon the said vessel in any port, dock, waters, or other place or places in which the said vessel, her tackle, apparel, boats, or furniture are, or may be, and to take and carry away the same, and

to sell and dispose of the same at public auction, or at private sale, for the best price he or they can obtain. And the said party of the second part, his executors, administrators, or assigns, are hereby authorized and empowered to become the purchaser or purchasers at such sale, if he so desire, and as the attorney or attorneys of the said party of the first part, his executors, administrators, or assigns, with full power of substitution for that purpose, by these presents duly authorized, constituted, and appointed, to make, execute, and deliver to the purchaser or purchasers thereof, in the name of the said party of the first part, his executors, administrators, or assigns, or otherwise, good, sufficient, and full bills of sale, or other good conveyances in the law therefor, and also to receive the proceeds of any such sale; and out of the money arising therefrom to retain and pay all costs and charges of advertisement and sale of the premises, and all charges touching the same. And also to retain and pay the sums of money which may be due and payable as aforesaid for principal and interest or premiums of insurance as hereinafter provided, rendering the overplus, if any, unto the said party of the first part, his executors, administrators, or assigns—which sale so to be made shall forever be a perpetual bar, both in law and equity, against said party of the first part, his executors,
60 administrators, and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

The said party of the first part agrees hereby, covenanting for himself, his executors, administrators, and assigns, also to make, execute, and deliver when thereunto requested by the said party of the second part, his executors, administrators, or assigns, or by the said purchaser or purchasers, all other necessary bills of sale, ratifications, and conveyances in the law on any such sale necessary or advisable, and hereby ratifying and confirming all acts which may be done by the said party of the second part, his executors, administrators, assigns, or attorneys, by virtue of these presents.

And the said party of the first part does further covenant for himself, his executors, administrators, or assigns, that he will, during all the time aforesaid, keep the said vessel, her tackel, apparel, boats, and furniture insured against loss or damage by fire, or by the perils of the sea, with war not included, in at least the sum of twenty-eight thousand dollars, and will assign the policy or policies of such insurance to the said party of the second part, his executors, administrators, or assigns, as additional security for the matters aforesaid, and in default of so doing, that the said party of the second part, his executors, administrators, and assigns, may make such insurance, and pay the premium or premiums therefor, which, with the interest thereon from the time of payment, the said party of the first part hereby does covenant as aforesaid to pay to the said party of the second part, his executors, administrators, or assigns, and the same shall be deemed to be secured by these presents, and shall be enforced and collectable in the manner above mentioned.

In testimony whereof the said party of the first part has hereunto set his hand and seal this twenty-ninth day of August, in the year one thousand eight hundred and sixty-five.

EDMUND KIMBALL. [SEAL.]

[U. S. int. rev. stamp, $25.]

Sealed and delivered in the presence of—
JOHN C. DODGE.

61 COMMONWEALTH OF MASSACHUSETTS,
United States of America, County of Suffolk, City of Boston, ss:

Be it known unto all men that on this 5th day of September, A. D. 1865, before me, Stephen Somes, notary public in and for said county, duly commissioned and sworn, dwelling in the city of Boston, personally appeared Edmund Kimball, above named, to me known to be the same person as described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

[NOTARIAL SEAL.] STEPHEN SOMES,
Notary Public.

Endorsed:

Custom-house, New York, received for record and recorded May 5, 1868, at 12.15 o'clock p. m., book 5, page 26, mortgages.

SAMUEL LEWIS, JR., *Clerk.*
G. W. EMLEN, *D. Collector.*

Belle of the Sea, 187. J. A. H. Dated August 29, 1866. Edmund Kimball to A. W. Hammond. Mortgage.

For a full and valuable consideration, to me paid, I hereby assign and transfer all my right and interest under the within mortgage to Joseph Nickerson. This assignment not to cover or take any policies which I am to collect.

E. A. HAMMOND.

May 5, 1868, ¼ past 12 o'clock p. m.

Custom-house, New York, received for record, and recorded October 17, 1867, at 1¾ o'clock p. m., book 5, page 26, mortgages.

SAM'L LEWIS, JR., *Clerk.*
P. WYNHOP, *D. C.*

October 15, 1867, ¼ to 2 o'clock p. m.

Custom-house, Boston, September 5, 1865, received for record, 1 h. 20 min. p. m. 18. M. Recorded liber 30, folio 187.

J. C. CLARK.

8. State fully, minutely, and particularly, when, where, and under what circumstances you had the interview with Johnson & Higgins, mentioned in your affidavit annexed to the interrogatories in
62 chief, and who was present, and what was said and done. Was this the first or only interview you or any member of the said firm of Joseph Nickerson & Co. had with said Johnson & Higgins or either of them? If not, state fully, minutely, and in detail, when, where, and under what circumstances, and for what purpose each and every other interview took place, which you or any member or members of the firm of Joseph Nickerson & Co. had had with said Johnson & Higgins, or either of them, in reference to said ship Belle of the Sea, and who was present and what was said and done at each of these interviews?

Ans. I answer that my first visit to Johnson & Higgins' office was on Saturday, Jan. 4, 1868. My object in calling there was to get the average statement of the ship Belle of the Sea, and to see how the accounts stood, in order to know if I could buy the ship with safety. I could not see Mr. Higgins, and could not get the account, only a few figures

on a piece of paper four inches square, which I annex hereto and mark "C." The accounts were not ready, and I called again on that day with no better success. I called on Monday, and finally saw Mr. Higgins. Mr. Krebs was present also, but after a short conversation, in which I stated the object of my visit, Mr. Higgins and I went into his private office, where we were alone. I told him I was trying to buy the ship Belle of the Sea, and would like to know how she stood with them. After a long conversation and some figuring, the sum and substance of which was that there was or had been a bottomry bond on the ship and cargo, which he had paid, and as security for which bond he held, as he said, the ship, cargo and freight; that he had collected about $34,000 freight and the cargo's proportion in general average; that he had also the assignment of the policies of Edmund Kimball, on which he should collect some $4,500, and this balance was more than enough to pay all the ship owed; that the freight money had been attached by the charterers, who claimed most of it, and if I bought the ship and would settle with the charterers, he would have at least $3,000 to pay over to me or the owners of the ship. He said there might be more, but I could rely with safety on that. As this agreed with a statement I had previously received that came from their office, I was satisfied. He gave me no account, but gave me the general average statement. This was my first interview with Mr. Higgins, and my only interview previous to my buying the ship. Before this interview my partner, Mr. Sears, visited New York and Johnson & Higgins, for the purpose of attaching the freight money in their hands and the policies of
63 insurance belonging to Mr. Kimball. After I had bought and paid for the ship I called at Johnson & Higgins' office and saw Higgins. He urged me to give bond to hold them harmless from the attachment of J. S. Farlow and Samuel Stevens, for they, the charterers, were pushing their suit for the freight money, and would not be put off much longer, and if I would give the required bonds to settle with the charterers or freighters I could take the ship, otherwise they (Johnson & Higgins) would have to libel her. I at first thought I should give the bonds, for, at our previous interview, he had intimated that that would be our best course, and I thought I should do it, but on further reflection I concluded that I had better wait and settle with the charterers, if I could; but I remember telling Mr. Higgins that if he wished to libel the ship, he could do so, as it would make no difference with us. Afterwards, in February, my partner (Mr. Sears) visited New York for the purpose of withdrawing our attachment on the policies of Mr. Kimball, endorsed to Johnson & Higgins. My next interview with Mr. Higgins was with Mr. Farlow, who represented the charterers. We met at Johnson & Higgins' office, and to settle the claims of the charterers, and Farlow to release the attachment on the freight money. It was there I received my first account of Johnson & Higgins. The account was not signed, and was not satisfactory, and not as I expected, and Mr. Farlow stated that it was not correct, and pointed out errors that he would not submit to; and after much talk he left the office saying many hard things about Johnson & Higgins' dealings. After Mr. Farlow was gone, Mr. Higgins stated that I had offered Mr. Farlow fair terms of settlement, and he thought he would settle. The next day I met Mr. Farlow at Johnson & Higgins' office. He said he had had so much trouble about the business that he wanted to settle. He said what he would take and release the freight, and I paid him the amount, and gave him our check for $15,554. After Mr. Farlow had left I asked Mr. Higgins to show me why this account differed so much from his former

statements to me, and asked him where the $3,000 were, that I did not understand it. He replied that he had varied it some, and began to make figures on this account, which are still on it, and proposed to allow me $5,023.54. I knew there was other insurance to be collected in New York on policies assigned to him by Mr. Kimball, and I stated I was not satisfied with his figures. And I am quite sure I stated to Mr. Higgins, in the presence of Mr. Krebs, that he would get no more from me, and that he had already got more than his pay; and I thought he agreed with me, at least it appeared so to me.

64 "C."

Fr. collected	$33,461 42
G. A	17,299 43
Ins	2,060 09
	$52,820 94

Sundry ch'rg's, $383.25, 534.07, 81.55.

9. What claims of the freighters did said Johnson & Higgins mention in the interview mentioned in the said affidavit? Did they mention any amounts and names? State fully all that they said in that interview.

Ans. I answer that the claims of John S. Farlow and Samuel Stevens & Co., charterers of the ship. Mr. Higgins said that the claim was for about $22,000, but that Mr. Kimball said that only about $6,000 should be allowed. I asked Mr. Higgins, in this my first interview with him, if I could buy the ship with safety. He said if I would settle with J. S. Farlow and Samuel Stevens & Co. I could; for if I should buy the ship and take the charterers off them there would be at least $3,000 coming to me.

10. Who were the agents of said firm of Joseph Nickerson & Co. for said ship Belle of the Sea at and before the time when she sailed from New York for Philadelphia, as stated in your affidavit?

Ans. I answer that I, Joseph Nickerson, was the sole agent.

11. Were you not, or was not said firm of Joseph Nickerson & Co., or some and which of them, furnished by said Johnson & Higgins, or by one and which of them, and when and how, with a statement of the affairs of the ship Belle of the Sea? If aye, annex said statement or a full, true, and complete copy thereof to your answers hereto?

Ans. I answer that I received the statement, hereto annexed and marked "D," from Johnson & Higgins' office. The paper has no date, and I cannot say positively when it was received.

65 "D."

Due to Mr. Hammond on mortgage	$28,000 00
" " for premium notes	6,125 00
	$34,125 00
To be collected by him under his policy on one-half the ship	10,007 00
	$24,118 00

Due on bottomry-bond:			
Say P. L. on vessel		$13,763 78	
Say G. A. on vessel		6,250 00	
Charges to net		11,803 21	
Due Johnson & Higgins		$31,816 99	
To be collected on three-eighths of two policies on hand of Johnson & Higgins, say	7,500 00		
Less notes to be deducted	$2,703 25		
		$4,796 75	
			$27,020 24
			$51,138 24

Against this is to be credited the freight due the vessel:

Mr. Stevens claims that is	$6,000 00
Mr. Kimball " "	22,000 00

Johnson & Higgins hold the freight subject to rights of parties.

12. Did you not, or did not said firm of Joseph Nickerson & Co., or some, and which of them, present the statement as furnished, and collect on it from insurers, both on vessel and freight of said ship Belle of the Sea? If aye, state fully and in detail when, where, and to whom said statement was presented for the purpose of collecting any insurance or insurances on said vessel or freight, and what, if any, amounts were received by said firm of Joseph Nickerson & Co., or yourself, or any other member of said firm, for, or on account of any such insurances, and from whom they were received. If you say such statement was not presented for any such purpose as inquired of, and that no insurances were collected upon it, then state fully and in detail what insurances were collected on said ship or freight by said firm of Joseph Nickerson & Co., or any member of it, and when, and from whom such collections were made, and upon what papers or evidence they, and each of them, were made, and annex to your answers copies of all such papers and evidence.

Ans. I answer that I presented no such statement as that inquired of, namely, paper marked "D." The papers upon which I collected from the insurers were the adjustment-statement of Johnson & Higgins, and another paper, which was a modification of the average statement, as the Boston insurance companies would not settle according to Johnson & Higgins' adjustment, as the figures were too large.

66 Upon these papers I collected from the American Insurance Company, Boston, $1,245.49, and from the Narragansett Company, Providence, in October, 1868, $1,273.32, for H. F. Pitman and others. The average statement is probably in the hands of the commissioners appointed by the court, and I cannot, therefore, annex a copy. I don't know where the other paper is; probably with the statement.

13. Did not the said firm of Johnson & Higgins, or one, and which of them, at the interview referred to in your affidavit, state to you that the charterers of the ship Belle of the Sea had a large claim, independent of the freighters; and did they not then and at some other, and what, time, furnish you, or some member of said firm of Joseph Nickerson & Co., a statement showing the total indebtedness of said vessel and freight of $43,270.76, and that the only sources from which such indebted-

ness could be met was the freight and whatever might be collected on the policies of insurance taken out and held by Edmund Kimball, the original owner? Annex each and every statement, such as inquired of, or copies thereof, to your answers hereto; and annex each and every statement received by said firm of Joseph Nickerson & Co. from Johnson & Higgins, or either of them, in reference to said ship, or copies thereof.

Ans. I answer that Johnson & Higgins made no such statement, that the charterers of the ship had a claim, independent of the freighters. No discrimination was made between charterers and freighters. I knew of none, and use the two expressions as meaning the same thing. They presented no such statement at the interview referred to; but subsequently, two months later, after we had bought and paid for the ship, they did present a statement, without any date to it, or the items thereof, which omitted to show the amount due from the cargo in general average, and which did not show how the money was apportioned towards the indebtedness of the ship; but which did pretend that the indebtedness of the ship was $43,270.76. The statement, as will be seen by the paper annexed, marked "E," does not show that the only source from which the indebtedness could be met *were* the freight and whatever might be collected on the policies of insurance. Hereto annexed, marked "E," is the original statement:

67 "E."

Ship Belle of the Sea in account with Johnson & Higgins.

DRS.

	Total.	Proportion to vessel.	Proportion to freight.	
To bottomry-bond taken up.....	$46,805 31	$31,345 34	$1,832 11	
To disbursements in New York, viz:				
To wages, port charges, &c., and watching.	5,547 32	5,547 32	.....	
To commissions paying above.....	1,308 81	922 31	45 80	
To interest on same from 17th October to March 9, 1868.	1,502 52	1,058 81	52 51	
To insurances to protect advances, say on ship's and freight's proportion.	.....	461 86	14 06	
To damages to cargo allowed in G. A.	1,116 13	197 37	95 25	
To adjustment fee, surveyor's fee, and commission collecting G. A. per statement.	2,114 23	476 77	169 77	
To lawyers' costs and fees	500 00	350 00	150 00	
To am't of freight charged to S. Stevens & Sons in account.	.....	.....	551 48	
		$40,359 78	$2,910 98	$43,270 76

CRS

By freight collected.....	$34,012 90	
Less commiss'n collecting.....	850 32	
	$33,162 58	
By proportion of freight allowed in G. A. collected from cargo.....	84 39	Allowed Farlow.

By interest obtained on freight-money by lending same on call four months	607 98	Allowed Farlow ½.	
By proportion of wages and provisions collected from cargo	1,841 34		
	$35,696 29		$35,696 29
			$7,574 47
Less collected on Mercantile's policy on freight after deducting premium note			$223 22

The above account is made for purpose of amicable settlement. If the account is to be enforced by legal process, Johnson & Higgins reserve to themselves the right to charge full legal commissions.

68	*Deduct Hammond and lawyer's bill of*	$1,000 00	$700 00
	Amount of commissions	850 00	850 00
	Difference in interest	451 00	
	Hammond's lawyer's fees	200 00	200 00
		$2,501 00	$1,750 00
		223 22	
	Amounts to be collected from policies in New York on vessel, about		$2,300 00
	Paid wharfage due from Hammond	324 12	
	Scrip, about	1,250 00	
		$1,574 12	
		$1,326 00	

MEM.—The writing in italics represents the pencil marks on the original account.

14. Before you purchased the said ship Belle of the Sea, did you not go on board said ship, and was there not at that time a person on board and in charge of said ship for Johnson & Higgins; and was there not also a person on board said ship in charge of the interests of E. A. Hammond or Arnold, from whom the firm of Joseph Nickerson & Co. purchased her?

Ans. I answer that I did go on board the ship before I purchased her, and saw no one in charge of her for Johnson & Higgins; but I did see a ship-keeper who said he was in the employ of J. W. Arnold. There was no one else in charge of the ship.

15. After you purchased said ship, did not you, or the agents of said firm of Joseph Nickerson & Co., place a person on board of her in charge of the interests of said firm in place of the person who had previously been in charge for E. A. Hammond or Arnold; and did not the person who was in charge on board of said vessel for Johnson & Higgins remain on board and in charge of her after you had purchased her?

Ans. I answer that after I had bought the ship I went on board with J. W. Arnold, who, in my presence, paid off his ship-keeper, and I then employed him to look after the ship for me. I never saw nor heard of any man being on board for Johnson & Higgins, or in their interest, or that they ever had anything to do with anybody on board the ship, directly or indirectly.

15. Did not the agents of said firm of Joseph Nickerson & Co., for said ship, after you purchased her, assure the said Johnson & Higgins that the vessel should not be moved without their consent; and did not said Johnson & Higgins thereupon, on or about January 22, 1868, write to said agents that, upon the faith of such assurances, and with the understanding that their (said agents') man is in charge of them, Johnson & Higgins, as well as for said firm of Joseph Nickerson & Co.,
69 they would pay off the man whom they (Johnson & Higgins) had in charge of the vessel, and cease that expense, or to that effect; and were you not, or some member of said firm of Joseph Nickerson &

Co., informed of said letter, and did you not express your assent to Johnson & Higgins to said arrangement, and was not said Johnson & Higgins' man thereupon paid off and discharged by them?

Ans. I answer that I was the sole agent of the ship for Joseph Nickerson & Co., and no one else was authorized to act for us in that capacity. I never assured Johnson & Higgins, nor did I authorize anybody else to assure them, that the ship should not be moved without their consent, and knew of no reason why I should give, or they ask of me, any such assurance. Johnson & Higgins wrote no such letter as that inquired of in the interrogatory at the time referred to, either to me as the agent of the owners, or anybody else, to my knowledge; but I heard for the first time, about a week ago, that a letter had been received by Messrs. Snow & Burgess, or one of them, in reference to the matter. As I have stated, I received no such letter, and was only recently informed that a letter was received by Snow & Burgess, or one of them. Having heard of no arrangement of the kind inquired of I gave no assent to it, and as there was no man on board the ship on behalf of Johnson & Higgins, there was of course no man to pay off.

17. Did you not, or did not some one, and which member of the firm of Joseph Nickerson & Co., before you purchased said ship Belle of the Sea, have an interview with E. A. Hammond, under whose mortgage the said ship had been sold at public sale; and did he not then tell you that said vessel had been bought in by said Arnold for him, Hammond, or on his account, or words to that effect; or did you not in some way, and how, and from whom, ascertain or understand before you purchased said vessel that the purchase of her at public sale by Arnold was in some, and what, way in the interest or for the account of Hammond?

Ans. I answer that I had an interview with Mr. Hammond, as I have stated before, on Saturday, January 4th, at his office, also on the following Monday, and he did not tell me that Arnold had bought the ship for his (Hammond's) account, nor anything to that effect; but he told me, and repeated it several times, that J. W. Arnold had bought the ship, and that the ship belonged to Mr. Arnold. I did not ascertain or understand before I bought the ship that Arnold had purchased her in the interest or on account of Hammond, but I heard some rumors to that effect, and mentioned them to Hammond, but he told me distinctly that the ship belonged to Arnold.

70 18. Did you not, at or about the same time that the bill of sale from Arnold to said firm of Joseph Nickerson & Co. for said ship Belle of the Sea was executed, take an assignment of said E. A. Hammond's mortgage on said ship to Joseph Nickerson & Co., and was not the purchase-money or price agreed on with Arnold to be paid for said vessel paid directly to said E. A. Hammond? State fully all your knowledge on this subject. Annex copies of said mortgage, if in your possession, and also of any assignment thereof to you or your firm.

Ans. I answer no; that we did not take any assignment of the mortgage at or about that time, nor till some time afterwards. The price was not paid directly to E. A. Hammond, nor indirectly, that we know. The price was paid by me directly to J. W. Arnold, by a check and two notes, all of which were payable to the order of J. W. Arnold, and were so paid. The mortgage and assignment have been already annexed.

19. Look at the paper annexed to these cross-interrogatories, and marked Number 1, and say whether the statement, of which said paper is a copy, was not submitted to yourself and Mr. Farlow (one of the parties interested in the charter of said vessel) together; and was not

said statement assented to by both yourself and said Farlow, and a settlement of the balance due the charterers agreed upon; and did you not then draw a check for such balance and give it to the charterers; and did you not then expressly authorize said Johnson & Higgins to apply the balance of the freight to the account as rendered by them and stop the interest? Or if otherwise, how otherwise? State fully and in detail, and state the date, amount, and other particulars of said check, and when and where said interview took place.

"B."—No. 1.

Ship Belle of the Sea and freight in account with Johnson & Higgins.

DRS.

	Totals.	Proportion to vessel.	Proportion to freight.	
To bottomry-bond taken up	$46,805 31	$31,345 34	$1,832 11	
To disbursements in New York per account, viz, wages, port charges, &c., and watching.	5,547 32	5,547 32		
To commission paying above	1,308 81	922 31	45 80	
To interest on same from 17 Oct. to March 9, '68.	1,502,52	1,058 81	52 51	
To insurances to protect advances. say on ship and freight's porportion.		461 86	14 06	
Carried forward,		$39,335 64	$1,944 48	
71 Brought forward		$39,335 64	$1,944 48	
	1,116 13	197 37	95 25	
To damages to cargo allowed in G. A.	2,114 23	197 37	169 77	
To adjustment fee, surveyor's fee, and commission collecting G. A., per statement.	500 00	476 77	150 50	
To lawyers' costs and fees		350 00	551 48	
To amount of freight charged S. Stevens & Sons in account.				
		$40,359 78	$2,910 98	$43,270 76

CRS.

By freight collected		$34,012 90	
Less commissions collecting		850 32	
		33,162 58	
By proportion of freight allowed in G. A. collected from cargo		84 39	
By interest obtained on freight-money by lending same on call 4 mos.		607 98	
By proportion of wages and provisions collected from cargo		1,841 34	
		$35,696 29	35,696 29
			$7,574 47
Less G. A. collected on freight			223 22
			$7,351 25

The above account is made for purposes of amicable settlement. If the account is to be enforced by legal process, J. & H. reserve to themselves the right to charge the full legal commissions.

Ans. I answer that the statement of which the paper marked "E" is a copy, is the account, if it may be called an account, having no date and no signature, already referred to, and was the first and only account I ever received from Johnson & Higgins. It was not given me till some two months after I had bought and paid for the ship. It was at the interview with Mr. Farlow, in Johnson & Higgins' office, already referred to, that I received it, and it was then submitted to Mr. Farlow and myself. We both objected to it very strongly. Mr. Farlow used some very strong expressions in regard to it, and left the office without settling. The next day I saw Mr. Farlow again; we came to an understanding, though not on the basis of Johnson & Higgins' account, for we both knew that to be incorrect; and I did then and there draw a check on the Second National Bank of Boston for $15,554, that being the amount agreed upon as due by Mr. Farlow and myself,
72 without regard to Johnson & Higgins' statement, payable to Mr. Farlow's order, which check was dated the day of the date of the settlement, March 9, 1868, and which check was paid, I understand, two days afterwards, in Boston. I did not tell Johnson & Higgins to apply the balance of the freight to their account as rendered by them, and so stop interest; for as the freight-money had always been in their hands, I knew of no interest to stop; but I did object to Mr. Higgins' account, and he said there were allowances to be made on it, and he made some memoranda in pencil on the account, which are on there still, showing that he would allow me $5,024.22; but I contended that by his own statement, previously made, there should be a balance in my favor. I told him that I had done all that I had agreed to do, that I had settled with the charterers, and that I considered that he had got more than his pay, and that I would not pay him another cent, or words to that effect. He seemed to be satisfied, and I left him. The account referred to is annexed, marked "E."

20. State fully and in detail what "freighters claims" against the said ship Belle of the Sea were paid by you, or by said firm of Joseph Nickerson & Co., and when, where, how, and to whom each and every such claim was paid, and the amount and character thereof.

Ans. I answer that John S. Farlow and Samuel Stevens' claims for about $22,000 were paid by me March 9, 1868, in Johnson & Higgins' office, by my check on the Second National Bank of Boston, to John S. Farlow, for $15,554, principally for advances abroad, charterers' balances.

21. At the interview referred to in the affidavit annexed to the interrogatory-in-chief, did not Mr. Higgins say that if all or the whole amount upon the policies of insurance on the vessel was collected, there might be a surplus after paying the total indebtedness on the vessel; but that this could not be, because Mr. Kimball's premium notes on the policies were still unpaid, or words to that effect?

Ans. I answer no, nor words to any such effect. He said that he expected to collect some $4,500, which was the net amount from policies assigned to him by E. Kimball, and if I bought the ship and took the charterers off them, there would be at least $3,000 to pay me.

22. Were you not, or were not the said firm of Joseph Nickerson & Co., or some member thereof, and who, informed, before you purchased said ship Belle of the Sea, by Mr. Higgins and by Mr. Krebs, or by some other person, and who, that all the disbursements and ex-
73 penses on account of said vessel, after her arrival in New York, were contracted by E. A. Hammond, as mortgagee in possession, and paid by Johnson & Higgins, on bills certified by said Hammond to

be correct, except the disbursements to Porter & Hamilton, ship-keepers, and Shope & Emery, discharging clerks, who were employed by Johnson & Higgins themselves?

Ans. I answer that neither the firm of Joseph Nickerson & Co. nor myself were ever informed before the purchase of the ship, nor did we or either of us know before the said purchase, that the bills were contracted by Hammond and paid by Johnson & Higgins, on bills certified by Hammond as correct.

I knew nothing at the time referred to about the disbursments to the ship-keepers and discharging clerks.

JOS. NICKERSON.

23. Do you know any other matter or thing which is or may be of benefit or advantage to the libellants in this case? If aye, state the same fully, minutely, and particularly, as if thereunto specially interrogated.

Not answered by witness.

AMBROSE SNOW, of the city of New York, being duly sworn according to law, deposeth as follows:

1. State whether you are a partner in the house of Snow & Burgess, at New York. State whether the ship Belle of the Sea was lying at New York in the years 1867 and 1868. If you answer yes, state during what portions of said years.

Ans. I am a partner of the house of Snow & Burgess, of New York city, and know that the ship Belle of the Sea was lying at New York during part of the years 1867 and 1868; I think from November, 1867, until April of 1868.

2. State whether you were authorized by Mr. Joseph Nickerson, or by the owner or owners of the ship Belle of the Sea, directly or indirectly, to make any pledge or engagement that said vessel should not be moved from the port without the consent of Johnson & Higgins, average-adjusters in New York. State whether you, or Mr. Joseph Nickerson in your presence, ever told Mr. A. F. Higgins that you or he did not suppose any one would object to the average-statement made out by Johnson & Higgins. Did or did not Johnson & Higgins require anything more of Joseph Nickerson & Co., in settlement and discharge of their (Johnson & Higgins') claims against the said Belle of the Sea, than that said Joseph Nickerson & Co. should relieve Johnson & Higgins from the claims of the charterers against the freight?

Ans. I was not authorized by any one, directly or indirectly, to
74 make any pledge or engagement that the Belle of the Sea should not be moved from the port of New York without the consent of Johnson & Higgins, or any person. Have no recollection of either Mr. Nickerson or myself saying that he or I did not suppose any one would object to the average-statement made out by Johnson & Higgins, or words to that effect. My impression is that there was some talk about the subject of Johnson & Higgins settling and discharging their claims against the Belle of the Sea, if Joseph Nickerson & Co. would relieve Johnson & Higgins from claims of charterers against freight; but I have no distinct recollection upon the subject. I was with Mr. Nickerson at Johnson & Higgins' office at various times upon the matters of the Belle of the Sea, but do not distinctly remember the purport of all the conversations.

3. Did or did not Johnson & Higgins, at the time said ship sailed from New York, make any objection to her going? State whether Johnson

& Higgins had a keeper on board said ship while she was lying at New York. If aye, for what purpose? State any other fact or facts in your knowledge that may be of service to respondents in this case.

Ans. Johnson & Higgins made no objection to the leaving of the ship from New York. Johnson & Higgins had a keeper on board of the ship during the early part of the time while the ship was lying here at New York—I presume for the protection of their interests.

I do not remember any fact or facts which may be of service to the respondents other than I have mentioned.

Cross-interrogatories.

1. How long have you known Mr. Joseph Nickerson, of the firm of Joseph Nickerson & Co., of Boston, and where and under what circumstances have you known him? Who composed the firm of Joseph Nickerson & Co. in the years 1867 and 1868, and who now compose said firm?

Ans. I have known Mr. Joseph Nickerson, in this interrogatory described, about twenty-five years; have had business connection with him from time to time during said period. The said firm of Joseph Nickerson & Co. was composed, as I am informed and believe, in the years 1867 and 1868, of Mr. Joseph Nickerson, his son-in-law, Mr. Sears, and a Mr. Randall. I think the firm is now composed of the same persons, together with the son of Mr. Nickerson.

2. Were not you, or were not the firm of Snow & Burgess, of which you are a member, the general agents of said Joseph Nickerson, or of the said firm of Joseph Nickerson & Co., in the years 1867 and
75 1868, in the city of New York? Or were not you, or your said firm, in some and what way, and for some and what purpose, or to some and what extent, at some and what time, and how long, the agents in New York of said Joseph Nickerson or said firm of Joseph Nickerson & Co.? State fully and in detail all the business relations of yourself and said firm of Snow & Burgess with said Joseph Nickerson and said firm of Joseph Nickerson & Co., during the years 1867 and 1868. What is the occupation of said firm of Snow & Burgess, and where is their place of business?

Ans. I was not, nor were my firm, the general agents in the city of New York of Joseph Nickerson or Joseph Nickerson & Co. in the years 1867 and 1868. Neither I nor my firm ever had any general agency for Joseph Nickerson or his firm. We had frequent business transactions, extending at intervals over a period of twenty or twenty-five years, and during said time we were from time to time the agents as to particular transactions which we were specially authorized to make. We were but seldom, if ever, occupied for Joseph Nickerson & Co. during a longer period than a month or six weeks at a time. The character of the occupation was to attend to some ship's affairs. I do not think that the firm of Snow & Burgess or myself had any business relations with Joseph Nickerson or his firm during the years 1867 and 1868, except the matter of the Belle of the Sea, and to attend to collect freight of the ship White Swallow, of which Nickerson & Co. own one-eighth, and the ship Nonantiem. We procured the Government charter for her, of which vessel Nickerson & Co. own, I believe, three-eighths part.

The occupation of my firm is ship-owning and commission business.

3. When, from whom, how, and under what circumstances, did you or your said firm ascertain that the ship Belle of the Sea was in New York in 1867 and 1868?

Ans. We learned that the ship Belle of the Sea was in New York in the fall of 1867 by current report. I think my information of the ship's arrival came from Mr. Benner, of the firm of Benner & Brown.

4. When, from whom, how, and under what circumstances, did you or your said firm ascertain that said Joseph Nickerson had become the purchaser or owner of said ship, or had any concern or interest in her, or intended to purchase her?

Ans. I think I first heard in the month of February, or thereabouts, of Joseph Nickerson having purchased the ship Belle of the
76 Sea. I heard it from himself. I was present when he paid some of the purchase-money to the party who bought the ship at mortgagee's sale. I do not remember his name. I knew that Mr. Nickerson was negotiating for the purchase of the ship before that time.

5. Did not said Johnson & Higgins, on or about the 4th day of January, 1868, send a messenger to your place of business, or the place of business of said firm of Snow & Burgess, that they, the said Johnson & Higgins, were ready to see Mr. Nickerson; or was not a message to that effect received at the place of business of said firm of Snow & Burgess; and did not Mr. Nickerson send a reply that he would see them on Monday? Or, if otherwise, how otherwise, and what reply, if any, did he send or make?

Ans. I have no recollection of the facts inquired of in this interrogatory.

6. Did not the said Joseph Nickerson, or some one on his behalf, and who, within a few days after the said 4th January, 1868, and when, show or furnish to, or leave with you, or the said firm of Snow & Burgess, an adjustment or average-statement which had been made, or which purported to have been made by said Johnson & Higgins, in the case of said ship Belle of the Sea; and was not such adjustment or statement sent by you, or by said firm of Snow & Burgess, to one James Lawson, esq., an adjuster in New York, to be thoroughly examined and reported on, or for some similar, or other, and what, purpose? And was not said adjustment or statement returned to you, or to said firm of Snow & Burgess, and when, by said Lawson, with a statement that he was satisfied therewith, or to that effect? Or, if otherwise, how otherwise; and state whether you ever saw any adjustment or average-statement in the case of said ship Belle of the Sea made, or purporting to be made, by said Johnson & Higgins, and when and where you saw it, and under what circumstances, and by whom, and for what purpose it was shown to you, and what you did with it? Annex to your answers hereto a true copy of every such adjustment or average-statement, and of all notes or letters sent to or received from said Lawson by you, or by said firm of Snow & Burgess, in reference or relating to any such adjustment or average-statement.

Ans. I think about the 4th of January, 1868, my firm received from Mr. Joseph Nickerson an adjustment or average-statement, purporting to have been made by Johnson & Higgins, in the case of the said ship Belle of the Sea, and such statement was sent by us to James Law-
son, an adjuster in New York, who returned it to our firm,
77 with the statement that so far as he knew the adjustment was right. There was no correspondence, to my knowledge, upon the subject between Mr. Lawson and our firm, and we returned the adjustment to Mr. Joseph Nickerson a few days after we had it returned to us by Mr. Lawson.

7. Did you not, on or about the same day when said adjustment or average-statement was returned by said Lawson to you or to said firm of

Snow & Burgess, or at some time, and when, see Mr. Higgins, of said firm of Johnson and Higgins, at their office in New York? If aye, state who was present at that interview, at what hour of the day it took place, and what was said and done. Was not said Joseph Nickerson present with you at that interview, and did he not accompany you to the office of Johnson & Higgins on that occasion, and did not he or you, and which, have said adjustment or average-statement there on that occasion? and state what was done with it, or said or done about it. And did not Mr. Nickerson, then or at some other time, and when, and where, and in whose presence, and to whom, state that he had examined the said adjustment or average-statement, and had got it all through his head, or understood it, or words to that effect? And did not Mr. Higgins state to you or to Mr. Nickerson, in your presence, that said adjustment or average-statement had been examined by the Atlantic Insurance Company, or some other insurance company, and approved, with the exception of the item of wages and provisions in general average claimed to have been paid in gold, or words to that effect; or if otherwise, how otherwise? And did not Mr. Nickerson and yourself, or one, and which of you, then, or at some time in the course of that interview, or at some other, and what, time, state to Mr. Higgins, or in his presence, or to or in the presence of some other, and what, member of said firm, or to some other person, and who, that you did not suppose any one would object to said adjustment or average-statement, or to that effect?

Ans. There were so many interviews upon the subject of the Belle of the Sea between Mr. Nickerson and Mr. Higgins, of the firm of Johnson & Higgins, at which I was present, that I cannot with certainty testify as to what took place at any particular one of them. I have a recollection that Mr. Nickerson, in my presence, and in the presence of Mr. Higgins, stated at one of these interviews that he had at last understood the average-adjustment, and I also remember that at some other interview Mr. Higgins, of said firm, stated to Mr. Nickerson, in my presence, that the average-adjustment had been examined by the
78 Atlantic Insurance Company, and had been approved, with the exception of the items of wages and provisions. As to the other matters inquired of in this interrogatory I have no distinct recollection, and would not undertake to answer.

8. Did not said Joseph Nickerson, at the interview referred to in the 7th cross-interrogatory, or at some other, and what, time, in your presence and hearing, state that he had arranged with Mr. Hammond (meaning E. A. Hammond, a mortgagee of said ship Belle of the Sea) to buy said vessel, and it only remained to see what said Johnson & Higgins proposed to do, or words to that effect? And to whom and in whose presence did he make such statement? And did not Mr. Higgins reply that they proposed to have that account settled exactly as presented, but that the exact amount to be paid could not be stated until they had completed the settlement of the vessel policies; and did Mr. Higgins not refer also, particularly or otherwise, and how, to the very large items still in dispute as to the freight to be credited to the vessel, and state that inasmuch as Mr. Stevens (meaning thereby the charterer or one of the charterers of the vessel) claimed the whole amount of freight to be due to him, no progress whatever could be made in bringing the matter to a conclusion until that question was settled, or to that effect; and if otherwise, how otherwise? And state fully and in detail all that was said and done in the course of that interview, and who was present.

Ans. I remember being present at an interview at office of Johnson

& Higgins between Joseph Nickerson and Mr. Higgins, of said firm, during which Mr. Nickerson said to Mr. Higgins that he was about purchasing the ship Belle of the Sea from Mr. Hammond, in this interrogatory mentioned, and before doing so he wanted to be thoroughly familiar with the affairs of the ship, and desired to be informed by said Higgins of said firm. I remember also that there was some conversation about the charterers; do not remember the particulars. As to the other matters inquired of in this interrogatory, I have no distinct recollection and cannot testify.

9. If in answer to the 2d interrogatory-in-chief you state that Johnson & Higgins did not require anything more of Jos. Nickerson & Co. in settlement and discharge of their (Johnson & Higgins') claim against the said Belle of the Sea than that said Joseph Nickerson & Co. should relieve Johnson & Higgins from the claims of the charterers against the freight, state fully and in detail how you so understood it, and from whom. Was it from Joseph Nickerson himself, or any and which of his firm, and when? If orally, state everything that was said, when
79 and where, and to whom, and under what circumstances, and who was present. If your understanding was derived from anything in writing, annex each and every such writing, or full, true, and complete copies thereof, to your answers hereto, and state when and from whom you received them, or they came into your possession or under your notice. State fully and in detail exactly what Johnson & Higgins did require of said Joseph Nickerson & Co. in settlement and discharge of the claims aforesaid.

Ans. In my answer to the second interrogatory-in-chief herein I said that I had no distinct recollection upon the subject. There was always a difference of opinion between Johnson & Higgins and Joseph Nickerson, and there was never to my recollection any agreement arrived at in my presence with reference to the average adjustment or the release of the ship. My impression with reference to the settlement with the charterers being virtually a settlement with Johnson & Higgins, mentioned in my second interrogatory-in-chief, was derived from conversations had with Joseph Nickerson in the absence of Mr. Higgins. In my presence Messrs. Johnson & Higgins always required of Joseph Nickerson & Co. the settlement of their adjustment in settlement and discharge of their claims.

10. If in answer to the second interrogatory-in-chief you mention any person or persons as the owner or owners of the ship Belle of the Sea, or that you were or were not authorized by such "owner or owners" as inquired of in that interrogatory, give the names of each and every person to whom you refer as owner or owners of the said ship, and how and in what way, and when and from whom, you ascertained or assumed to ascertain that they were such owner or owners.

Ans. The only person I knew as owner of the ship Belle of the Sea is Mr. Joseph Nickerson, and I have heretofore in this examination stated how I learned to know how Mr. Nickerson became the owner. He told me so himself. I do not remember the name of the owner before Mr. Nickerson purchased the ship. I think Mr. Nickerson owns her still.

11. Where did said Joseph Nickerson reside in the years 1867 and 1868, and where in those years did the said firm of Joseph Nickerson & Co. have their place of business? Was it not in Boston, Massachusetts, or in that neighborhood, and were not you or your said firm of Snow & Burgess intrusted by said Joseph Nickerson, or said Joseph Nickerson & Co., with the general care and management in New York of his and their interests in or relating to or respecting said ship Belle of the Sea;

or, if otherwise, how otherwise? And state fully and in detail all
80 your conversation, and the connection of your said firm of Snow & Burgess with said ship Belle of the Sea and her affairs, and when, and how, and under what circumstances, and at whose request you and they came to have anything to do with her, or her affairs, or with the interests of said Joseph Nickerson & Co. or said Joseph Nickerson in said ship.

Ans. Joseph Nickerson resided at Jamaica Plains, near Boston, Massachusetts, during the years 1867 and 1868, and the firm of Joseph Nickerson & Co. had their place of business in Boston, State of Massachusetts. Neither myself nor the firm of which I am a member had the general management of the affairs of the ship Belle of the Sea during her stay in port at New York for Mr. Joseph Nickerson or Joseph Nickerson & Co. Mr. Nickerson managed the affairs of the ship himself. He employed his ship-keeper, and came on frequently from Boston. My firm were desirous of procuring a charter for her, and eventually succeeded, and in some minor matters my son attended to the affairs of the ship, at Mr. Nickerson's request, and with reference to the ship's affairs. Mr. Nickerson generally, we being old friends, advised with me.

12. Were you ever forbidden by said Joseph Nickerson, or said Joseph Nickerson & Co., or any member of said firm, and who, and when, and in what way, to engage that said Belle of the Sea should not be moved from the port of New York without the consent of Johnson & Higgins? And did not you and said firm of Snow & Burgess consider and understand that you had authority for and on behalf of said Joseph Nickerson and said firm of Joseph Nickerson & Co. to make such engagement or arrangement should you see proper or think it advisable or necessary?

Ans. Neither I nor my firm were ever forbidden by Joseph Nickerson or Joseph Nickerson & Co. not to make any special arrangement with Johnson & Higgins with reference to the departure of the Belle of the Sea from New York; nor were we authorized to make any arrangement or engagement with reference to the matter.

13. If in answer to the third interrogatory-in-chief you say that Johnson & Higgins did not at the time said ship sailed from New York make any objection to her going, state whether they knew or were informed, and, if so, how, and by whom, and when, of the time said ship sailed or was about to sail from New York, and had they not objected at some other and what time, and how, and to whom and under what circumstances, to said ship leaving New York without their knowledge, and until their claims against her or on her account had been paid and
settled, or otherwise, and if otherwise, how otherwise? Answer
81 fully and in detail. If you say that you understood that Johnson & Higgins did not object to the Belle of the Sea leaving the port of New York or going therefrom, state fully and in detail how, and from whom, and when and under what circumstances you understood it? Was it from Joseph Nickerson himself, or any and which of his firm? If orally, state everything that was said, and to whom it was said, and who was present. If your understanding was derived from anything in writing, annex each and every such writing, or full, true, and complete copies thereof, to your answers hereto, and state when and from whom you received them or they came into your possession or under your notice?

Ans. I do not know whether or not Johnson & Higgins knew of the intended sailing of the ship Belle of the Sea from the port of New York. My firm sent them no special information, but in shipping circles it was

generally known, as she was properly cleared by the custom-house officers. Some months prior to the departure of the ship, during the pendency of the negotiations for the purchase of the ship by Nickerson & Co., Mr. Higgins called upon me and told me that there were two keepers on board, and that he would discharge his keeper if I would let him know of any intention to move the ship. I assented to that, and the keeper of Johnson & Higgins was discharged. Subsequently the ship was moved from near the foot of Wall street to the Empire Store, and I informed them of such removal; and when she sailed from New York, we did not send word to Johnson & Higgins, because we presumed that the whole matter had been settled. I do not know whether Johnson & Higgins had or had not any objections to the sailing of the vessel. Know nothing upon the subject.

14. Did you not, or did not your said firm of Snow & Burgess, on or about January 22, 1868, receive a note from said Johnson & Higgins, in reference to the discharge of their keeper who had theretofore been in charge of the Belle of the Sea for them, and is not the paper hereto annexed, marked A, a true copy of said note? And if not, why not, and if otherwise, how otherwise, and annex to your answers hereto all communications received by you, or by your said firm of Snow & Burgess from said Johnson & Higgins, or on their behalf, or in your or their possession, or full, true, and complete copies thereof, in reference to, or in anywise relating to, or touching, or concerning said ship Belle of the Sea?

82 A.

JANUARY 22D, 1868.

Messrs. SNOW & BURGESS:

GENT': As we see no possible reason for continuing the expense of Mr. Porter in charge of the Belle of the Sea for our protection, under the assurances received from you heretofore, and with the understanding that your man is in charge for us as well as Mr. Nickerson, we will pay off Mr. P. and cease that expense from to-day.

Yours sincerely,

JOHNSON & HIGGINS.

Ans. I do not think that the original note, referred to in this interrogatory, is in my possession. I read copy of note marked "A," annexed to commission, and, to the best of my recollection and belief, the same is a true copy of a note received from Johnson & Higgins by our firm, on or about the time the same bears date. I do not remember having received any other note from Messrs. Johnson & Higgins, or having other correspondence upon the subject.

15. Did you not, or did not the said firm of Snow & Burgess know that the Mr. Porter mentioned in said note, a copy of which is hereto annexed, marked A, was in charge of said Belle of the Sea, for and on account of said Johnson & Higgins, and for the purpose, either in whole or in part, of preventing said ship from leaving the port of New York without their knowledge? And if otherwise, how otherwise, and when did you or said firm of Snow & Burgess know, or have any intimation or suspicion that Johnson & Higgins had a keeper on board of said ship?

Ans. I have no personal knowledge of any of the matters inquired of in this interrogatory.

16. Did you not, or did not said firm of Snow & Burgess, some time in May, 1868, and at or about the time when said ship Belle of the

Sea, cleared from New York for Philadelphia, and when, receive from said Johnson & Higgins, or from some one of said firm, or from some one on their behalf, and who, a communication asking an explanation of, or referring or relating to the moving of said ship from the port of New York without the consent of said Johnson & Higgins, and annex said communication, or a full, true, and complete copy thereof to your answers hereto ?

Ans. I received a communication from Messrs. Johnson & Higgins, asking an explanation with reference to the moving of
83 the ship, Belle of the Sea, on or about the time referred to in this interrogatory. I have not the letter; it is mislaid.

17. Did not you, shortly after the receipt of the communication inquired about in the 16th cross-interrogatory, call at the office of said Johnson & Higgins, and state that you had really supposed, from conversation with Mr. Nickerson, that he had either settled their account, or had come to a perfect understanding with them about it; but that the ship was in Philadelphia, and they could still attach her, or to that effect ? Or if otherwise, how otherwise, and state fully and in detail all that ever took place or was said between or by you, or either of said firm of Snow & Burgess, with or to said Johnson & Higgins, and any member of said firm, in reference to the removal of said ship from the port of New York, and when and where, and in whose presence it was said ?

Ans. I called, upon the receipt of the communication referred to in last interrogatory, on Johnson & Higgins, and told Mr. Higgins, of said firm, that I supposed from the negotiations which had taken place that I was absolved from the promise I had made to let them know of the removal of the ship. I have not distinct recollection of the exact words which were used on that occasion. I might have said that the vessel was in Philadelphia and that they could attach her, and might also have said that I supposed the accounts to have been settled. No distinct recollection as to who was present at said conversation other than Higgins.

18. Have you or said firm of Snow & Burgess any interest, direct or indirect, in this present suit, or in the claim which is the subject of controversy ? If aye, state the same fully, minutely, and particularly.

Ans. I have no interest, nor has my firm any interest, in the subject-matter of this controversy.

19. Do you know any other matter or thing which is or may be material or of advantage to the libellants, the said Johnson & Higgins, in this suit ? If aye, state the same fully, minutely, and particularly, as if thereunto specially interrogated.

Ans. I do not.

AMBROSE SNOW.

Subscribed to and sworn this 1st day of April, 1869, before
SIMON STERN, *Commissioner.*

84 Ship Belle of the Sea arrived in New York Sunday, Oct. 13, 1867. On Monday, Oct. 14, J. R. Kimball, son of the owner and agent, went to New York, arriving there Tuesday, Oct. 15. Went to the office of Johnson & Higgins on the afternoon of that day. Found that Mr. Johnson had gone to Europe, and Mr. Higgins was out for the day. Wednesday morning, Oct. 16th, at about 10 o'clock, met Mr. Higgins in doorway to his office. Had only general conversation. At 11 o'clock of same day, in Johnson & Higgins' private office, present only

E. Kimball, sr., Mr. Higgins, of Johnson & Higgins, Edmund Kimball, jr., and John R. Kimball. Door closed. Mr. Higgins stated to Mr. E. Kimball, sr., in a loud, distinct tone, repeatedly, that the bottomry bond was in S. G. Ward's hands, that Mr. E. A. Hammond, and Samuel Stevens, and John S. Farlow, and himself (Higgins) had been trying to get it, but Mr. Ward required assent of Mr. Kimball, the owner of the ship. Mr. Higgins proposed to pay the bond for Mr. Kimball if Mr. Kimball would give him adjustments of claims against insurance companies. Said he had $100,000 on deposit regularly for emergencies of this sort. Said he could make it up so that there would be claim against ship, after paying mortgage and bottomry bond, of only $20,000. J. R. Kimball objected to estimate as too low, when Mr. Higgins affirmed that he could reduce all the ship's liabilities to $25,000 certainly. He said repeatedly that he could do the business for a charge of one and one-quarter per cent. upon the freight and general average on cargo, to be collected by him, and a reasonable charge for adjusting. He said that he would not charge any commission for payment of bottomry bond, as he would not be out of that money more than a day or two, as he intended to require payment immediately, and before delivery of cargo, of all charges on cargo, naming the freight and general average thereon. That there were not many owners of cargo, and that they were very earnest to get their goods; several had called, and they would pay any moment the entire freight and estimate general average on cargo. Mr. Higgins estimated the freight at about $34,000, and the general average on cargo at $20,000, which would more than pay bottomry bond, and disbursements on crew inwards, &c., &c. This was all verbally agreed to by both parties, and Mr. Higgins was requested by Mr. J. R. Kimball to have the agreement reduced to writing, but Mr. Higgins objected that he did not want it in writing, as his relation to Mr. Hammond was such that he did not want it to appear so that Mr. Hammond might see it, but that they (Johnson & Higgins) would
85 act only for Mr. Kimball's interest, would fix accounts so as to have charges of adjustment bear lightly on the ship; that their influence with insurance offices was very great, and therefore they could push the matter forward successfully, and make large charges against insurance, &c.; said the reputation of their house was very high, and that they would as sacredly fulfil verbal as written agreements, said they would apply collections to bond immediately. At Mr. Higgins' request the Kimballs then went to Mr. Ward's office, and informed Mr. Ward that he might let Mr. Higgins have the bond, he, Mr. Higgins, agreeing to pay for it as Mr. Kimball's agent, and as agreed on above, without charging any commission. Nothing was said at this interview about Mr. Kimball's policies of insurance on the ship, but at a subsequent meeting they were handed to Mr. Higgins by Mr. Kimball, sr., to be collected, and the amount to be applied to payment of bond if necessary.

EDMD. KIMBALL.
J. R. KIMBALL.

Witness to both signatures:
GEO. L. GOODALE.

87 VIII.

Order of reference to commissioners.

THE BELLE OF THE SEA.

And now, 20th October, 1868, this case was heard upon the application of the respondents to dismiss the libel for want of jurisdiction, for

the reasons which are specified in their allegations filed on 21st September last. The court is of opinion that in the present stage of the cause the want of jurisdiction does not sufficiently appear, and refuses the application without prejudice to the right of the respondents to the full benefit of their exceptive suggestions or allegations at any final hearing or intermediate proper stage of proceedings.

And the court order that the case be referred (unless both parties object) to Morton P. Henry, esq., and Captain John H. Young, as commissioners to ascertain and report what amount, if any, remains due upon the bottomry bond by the vessel, according to the ordinary course of adjustment and settlement of such questions; leaving open for subsequent consideration all questions depending upon express or implied conventional arrangement or acquiescence of parties, and all questions of right of the respondents as purchasers for value without notice.

88 IX.

Report of commissioners with exceptions, and orders of court respecting the same.

To the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania.

JOHNSON & HIGGINS
v.
SHIP BELLE OF THE SEA. } In admiralty. Bottomry.

The commissioners to whom it was referred by the order of court in this cause, to "report what amount, if any, is due upon the bottomry-bond by the vessel, according to the ordinary course of adjustment and settlement of such questions," respectfully report: That in their view the proper adjustment of the accounts can only be arrived at by ascertaining the net freight collected by Messrs. Johnson & Higgins, the libellants, from the voyage in question, and appropriating the same, and the amounts collected from insurance and other sources on account of the vessel, in payment of advances; the balance will show the amount remaining due against the vessel on the bottomry-bond.

In accordance with this view they state, first, an account of the freight, deducting the charges necessary to its collection, the port charges, and all incidental expenses usually settled by the owners out of the freight.

In relation to the commissions allowed on all items, including the advance on the bottomry-bond made by Johnson & Higgins, as well as on freight, general average, and disbursements, it appears that an agreement existed between Johnson & Higgins and Mr. Hammond, the mortgagee in possession, to divide the same; the commissions charged were two and a half per cent., half of which was to be paid to Mr. Hammond; the commissioners report that such an arrangement was improper, as Mr. Hammond, in taking possession of the vessel in New York, became substituted for the owner; and they therefore allow as against the ship and freight one and a quarter per cent., which has been ascertained by the commissioners to amount from all sources to $1,011.61. The general average was adjusted on the basis of two and a half per cent. com-
89 mission, at which rate it was collected from the cargo, and on this account the libellants received in general average on cargo commissions amounting to $961.61. If these commissions had been re-

duced proportionably, the amount received from cargo would have been $480.80. The respondents claim that they are entitled to the benefit of this as an overpayment by the cargo in reduction of the amount payable by the ship. The commissioners do not see the force of the argument. It was paid voluntarily and without dispute, as a fair compensation and not in relief of the ship's indebtedness. If overpaid, the owners of the cargo may have a claim against the libellants; but, in point of fact, no objection to this commission exists as a charge against the cargo. The ground on which the commissioners reduced the charges for commissions payable by the ship was because the mortgagee, Mr. Hammond, on taking possession of the ship, could not make an arrangement for return commissions which would enure to his benefit or own private advantage, and they have therefore given the ship the benefit of the return commissions, which by the arrangement he was to receive from Johnson & Higgins. The commissioners therefore only throw out of the account one-half, or $1,011.41, of the commissions charged on ship's account, which, if collected, would have been paid to Mr. Hammond.

In the settlement of interest, the commissioners see no reason why the ordinary rule of charging interest upon both sides of the account, according to the mercantile usage, should be departed from. The funds were not attached, and the freight, when collected, became an actual payment, and interest ceased to that extent; the rule which makes an attachment stop the running of interest can have no application to the case of a suit brought to recover back the money. If the plaintiffs had succeeded in their suit, Johnson & Higgins would have had to pay legal interest to the plaintiffs, without regard to the manner in which they had treated the fund. It may be added that the statement of Johnson & Higgins did not, in the opinion of the commissioners, make such a legal separation of the freight money, as would have made it a separate fund from other moneys belonging to themselves. They were in the habit of keeping large sums of money on call. When this suit was brought, in relation to the freight, they increased the amount so placed out on call, by the amount of the claim for freight, and allowed interest at the rates which they received for moneys on call; but no such specific appropriation of any particular fund was made as would have given the parties entitled to the freight a right to it specifically as against the general creditor. The interest account is stated accordingly.

90 An item of credit was claimed by Johnson & Higgins for $350, counsel fees paid to Messrs. Man & Parsons, upon which the commissioners desire to report at length; the nature of the services rendered are set forth in a letter from them hereto annexed.

Mr. Stevens was charterer at so much per ton, and claimed to have advanced, on account of the freight and profits due on charter, $27,000, leaving a balance due on freight of $7,000, upon which claim he brought suit against Johnson & Higgins in the State court of New York. Mr. Kimball, the owner of the ship, maintained that the advance was only $16,000, and the balance due the ship was $18,000. Mr. Nickerson purchased the ship, (from the party who had bought her previously at public sale,) and eventually paid Stevens $15,534 in liquidation of his claim for advances; Stevens consented to withdraw his opposition to Johnson & Higgins collecting the freight, under their pledge "to act with strict impartiality to all parties." On the one hand, it may be urged that this freight having been collected by Johnson & Higgins, was so far a payment of the bond, and, t[illegible]efore, Johnson & Higgins were

bound to protect their own interest as holders of the bond, against a claim of a third party, which would impair their security, in the same manner as holders of collateral would be obliged to incur the expense of defending their right to the collateral against a party claiming adversely to the debtor. On the other hand, the charterer's claim to his share of the freight, if successful, would have thrown a greater burthen on the ship. The question is one of considerable doubt in the minds of the commissioners, whether the liability to such a demand is not one of the fair business risks which the libellants assumed on taking the business, and which they were compensated for in the commissions paid them. Johnson & Higgins assumed a two-fold position in this transaction: First, as administrator of the fund for all parties, charterer, owner, and mortgagee; and in addition they likewise assumed the position of merchants advancing on the bottomry-bond; as administrators of the fund, they would have the right to counsel fees; as holders of the bond, they must pay their own expenses for legal advice. Under this view the commissioners have concluded to recommend this item to be divided between the libellants and the owners of the ship. In view of a different opinion being entertained by the court in reference to this counsel fee, the commissioners, to save the expense of another reference, have stated an account, throwing it out as an item of credit to Johnson & Higgins.

91 In reference to the items of disbursements at New York, charged and allowed, there is an item of $500, paid to Mr. Hammond, (mortgagee in possession,) principally consisting of an item of $457.55 for insurance on his mortgage on the vessel, the terms of which mortgage required the owner of the ship to keep him insured, and allowed him, in default thereof, to insure at the owners' expense. The ship was subsequently sold under the mortgage, which, if not paid out of the freight would have been tacked to the mortgage and increased the amount due on that security. They do not see that the owner of the ship, or any one standing in his place, can complain of this appropriation of the funds by Johnson & Higgins. If they had refused to pay it, the amount of the mortgage would have been increased to the same extent that the bond was reduced. This item the commissioners allow as a proper deduction from the freight.

The commissioners have been desired by counsel for respondents to note an objection to the allowance of certain items deducted from freight which were not expenses required for the delivery of the cargo, to enable the ship to earn the freight, and which they claim are not proper deductions from freight, but a general claim against the owner.

The commissioners overrule this exception as inconsistent with the arrangement under which the vessel was placed in the hands of Johnson & Higgins, and the mercantile usage which is to include all port charges in the account of freight. The libellants having collected the freight would have a right to apply it as they have done to the liquidation of unsecured indebtedness, instead of their indebtedness secured by the bottomry-bond.

Respectfully submitted.

MORTON P. HENRY.
JOHN H. YOUNG.

MARCH 19TH, 1869.

The commissioners have notified the proctors and advocates of the respective parties of their intention to file the report and statements in this case.

92 *Freight statement.*

The amount of freight on the voyage was...	$34,012 90	
Less Stevens' (the charterer) freight uncollected	551 48	
	$33,461 42	
Deduct freight's proportion of general average	2,422 75	
		$310,38 67
Add the proportion of freight made good in general average.....	84 39	
Add amount collected on freight's policy of insurance	223 22	
		307 61
		$31,346 28

CR.

By disbursements in New York.....	$5,547 32
Net amount of freight carried to "statement of bond"	$25,898 96

Statement of bond.

The total amount of the bottomry-bond is..		$46,805 31
The bond is made up as follows, viz:		
Ship's proportion of the bond.....	$31,362 73	
Cargo's proportion of the bond.....	13,610 63	
Freight's proportion of the bond	1,831 95	
		$46,805 31
The ship's proportion of the bond as above..		$31,362 73
The commissions from all sources at 1¼ per cent	$1,011 61	
Add half "counsel-fee" paid Messrs. Man & Parsons	175 00	1,186 61
		$32,549 34

CR.

By net amount of freight as per statement..		$25,798 96	
By net amount of insurance collected on ship's policy.....		1,022 51	
By amount wages collected in general average		1,841 34	
		$28,662 81	
Deduct the insurance to cover advances	$461 86		
Deduct damage to cargo, (in handling)	197 37		
Deduct ship's prop'n of adjusting-fee, &c.	351 77	1,011 00	27,651 81
Balance due on bond without interest.....			$4,897 53

Interest account.

Interest on ship's proportion of the bond from Oct. 16, 1867, to Oct. 28, 1867, (12 days,) at 7 per cent. per annum	$79 56	
Interest on $4,897.53, the balance due on bond, from Oct. 28, '67, to March 28, '69, 17 mos., at 7 per cent. per annum	485 69	565 25
Balance due on bond, March 28, 1869		$5,462 78

93 STATEMENT OF BOND.

The total amount of the bottomry-bond is		$46,805 31
The bond is made up of the following items, viz:		
Ship's proportion of the bond	$31,362 73	
Cargo's " " " " payable in G. A.	13,610 63	
Freight's " " " " " "	1,831 95	
		$46,805 31
Ship's proportion of the bond	$31,362 73	
Add commissions payable by ship and freight from all sources	1,011 61	
		$32,374 34

CR.

By net amount freight, as per freight statement		$25,798 96	
By net insurance collected on ship's policy		1,022 51	
By amount wages collected in general average		1,841 34	
		$28,662 81	
Deduct the insurance to cover advances	461 86		
Deduct damages to cargo, (in handling)	197 37		
Deduct ship's proportion of adjustment-fee, &c	351 77		
		1,011 00	
			27,651 81
Balance due on bond, without interest			$4,722 53

INTEREST ACCOUNT.

Interest on ship's proportion of the bond, from Oct. 16, 1867, to Oct. 28, 1867—12 days—at 7 per cent. per annum	$79 56	
Interest on $4,722.53, the balance due on bond, from Oct. 28, 1867, to say March 28, 1869—17 months—at 7 per cent. per annum	468 35	
		547 91
Balance due on bond March 28, 1869		$5,270 44

STATEMENT OF COMMISSIONS.

Ship's proportion of bond, general average items, and disbursements in New York, $37,371.91, at 1¼ per cent....	$467 15
Ship's proportion of general average, at 1¼ per cent.....	126 20
Freight, (collecting,) at 1¼ per cent.....	418 26
Total commissions as allowed	$1,011 61

94 ALBON P. MAN. JOHN E. PARSONS.

LAW-OFFICE OF MAN & PARSONS,
64 WALL STREET, NEW YORK,
January 2, 1869.

MY DEAR SIR: The press of matters at the close of the year, and the intervention of the holidays, must plead my excuse for delay in answering your favor of December 17th instant.

I assume that the evidence before you furnishes the leading facts in the case of the Belle of the Sea.

Johnson & Higgins had advanced a large amount (the accounts will show the figures) in taking up the bottomry-bond, and in disbursements at New York, of different kinds. They had also collected a considerable amount of freight-money, the claims of the owner of the vessel, Mr. Hammond, the mortgagee, and the representatives of Mr. Stevens, the charterer, in reference to the application of which conflicted, and which, therefore, they, as mere custodians, were not at liberty to apply in reduction of their outlay. They advised with me generally in reference to the case, and particularly in respect to the situation of the freight-money. I was of the opinion that the true course was to put the vessel, cargo, and freight-money into admiralty, which could adjust the liabilities of the several interests and the claims of all concerned. I communicated this purpose to the attorneys of Mr. Stevens' assignees, and they, to embarass the situation of the freight-money, brought suit for it against Johnson & Higgins in our State supreme court. I, notwithstanding, prepared a libel in admiralty, and before issuing it put myself in communication with the attorney representing those interested in the vessel, He complained of the inability to find so considerable a bond as required for the vessel's discharge, and requested me to wait, pending efforts for a settlement. I did so, directing Johnson & Higgins to retain, for the benefit of all concerned, a man in possession of the vessel. Meantime the vessel was sold under the mortgage. Mr. Nickerson became the purchaser, and such arrangements were made that I was instructed to discontinue all proceedings, and the Stevens suit was withdrawn. These particular services ran through several months, and for them a charge of $500 was made, which, in consideration of Messrs. Johnson & Higgins, and the fact that a settlement was made, was reduced to $350, and which here would constitute a fair charge against the freight-money in Johnson &
Higgins' hands as custodians; and if paid from the freight-
95 money would, to that extent, diminish it as a credit on the bond and other vessel-liens, and so proportionately increase the liability of the vessel.

Yours, respectfully,

JOHN E. PARSONS.

MORTON P. HENRY, Esq,
416 *Walnut Street, Philadelphia.*

Disbursement account ship Belle of the Sea, at New York.

To entry fees, &c., at custom-house, $201; cash to capt. and E. A. Hammond, $461	$662 00
To pilotage, $135.62; bedding for person in charge, $15.05; towage, $120	270 67
To running lines, $4; ballast, $62.50; pilotage, $5; running lines, $2	73 50
To labor, $30.44; board of wardens, $21; W. J. Merry's wages, $75	126 44
To merchants' police, $73; Judge Bebee, $200; unbending sails, $19	292 00
To wharfage, $124.33; ship-keeper, $176.12; stores and stove, $28.20	328 65
To wages paid to seamen	1,621 68
To stevedore's bill discharging cargo, &c	1,084 30
To cooper, $40; discharging-clerk, $80; watching ship, $14 62	134 62
To repairing cargo, $55.50; porter in charge of ship, $285	340 50
To coal, $7; ship's proportion of Swope's bill, $100	107 00
To E. A. Hammond, petty disbursements	500 00
To telegrams and cartage	5 96
	$5,547 32

The commissioners have exhibited the foregoing report to the proctors and advocates of the respective parties.

Exceptions to said report are made by Henry Flanders, esq., counsel for the respondents, and are attached hereto.

The commissioners have examined said exceptions, and see no reason for changing their report.

MARCH 29TH, 1869.

U. S. D. C. eastern district of Pa. In admiralty.

JOHNSON & HIGGINS
v.
SHIP BELLE OF THE SEA.

Exceptions on the part of the respondents to the report of the commissioners appointed by the court to ascertain whether any balance was due by the above-named ship on the bottomry-bond according to the ordinary course of adjustment and settlement of such questions:

96 First. Because the commissioners have reported a balance due on the bottomry-bond of $5,462.78, whereas they should have reported that there was no balance thus due at all.

Second. Because the commissioners have assumed that all claims, paid or alleged to have been paid, by the libellants at New York, must practically be added to and constitute a part of the bottomry-bond, whereas the greater part of said claims were only a personal charge against the ship-owner, the ship being, under ordinary circumstances, specifically bound for such claims alone as were incurred in realizing the freight and other funds out of which to pay the bottomry-lien.

Third. Because, by the regular course, no payments made by a bondholder or the agent of a bondholder, not even payments of lien-claims,

such as pilotage and subsequent wages, which take precedence of the lien of bottomry, are allowed, unless an order for such payment has been previously obtained from a court of admiralty.

Fourth. Because even admitting that the indiscriminate allowance by the commissioners of all payments made by the libellants is defensible, yet the method of adjustment and settlement adopted by them does not account for and properly apply the money collected by the libellants in general average, and must necessarily lead to an erroneous result, as the following statement will show:

Belle of the Sea to Johnson & Higgins, Dr.

To amount of bottomry-bond		$46,805 31
disbursements in New York		5,547 32
adjustment fee		1,250 00
insurance to protect advances		461 86
commissions		1,011 42
Shope's bill		150 00
Total		$55,225 91
Cr. by amount of freight	$33,461 42	

CR.

By amount of freight	$33,461 42	
G. A. from cargo	17,545 48	
insurance	1,245 73	
	$52,252 93	

Included in the general average collected from the cargo, is $961.61, being the cargo's proportion of commissions. Hammond, the mortgagee in possession, and as representative of the ship, stipulated with
97 Johnson & Higgins, on giving them the agency of the ship's affairs, that they should pay over to him "one-half of all the commissions that could be earned in the case." Now, whatever benefit, profit, or advantage Hammond, as the representative of the ship, was to derive from this arrangement, enures not to him but to his principal, the ship. The commissioners have erroneously reported that the respondent's claim for a share of the commissions paid by the cargo is put on the ground "of overpayment by the cargo." Whereas the respondents claim "one-half of all the commmissions earned in the case," no matter by what interest paid, on the ground stated above, that any profit arising from the arrangement made by Hammond must enure to the benefit of his principal. Beside the ship, *qua* ship is entitled to collect 2½ per cent. commission from the cargo, on the cargo's proportion of the general average, and the practical effect of Johnson & Higgins' arrangement was that, in consideration of their being allowed to act as the ship's agents, in collecting the general average, they could only charge for this service one-half the commission, the other half going to the ship. The ship then receiving one-half the commission paid by the cargo, to wit, $480.80, the account will stand thus:

Ship Dr	$55,225 91	Interest from October 28, 1867, to March 28, 1869	$342 50
Ship Cr	51,772 13		3,453 78
Balance	$3,453 78	Total	$3,796 28

Fifth. Because the commissioners have erred in recommending that the sum of $350, paid by Johnson & Higgins to Messrs. Man & Parsons, as counsel-fees, be divided between the libellants and the owners of the ship, whereas they should have rejected this claim altogether. Johnson & Higgins collected the freight, as stated by A. F. Higgins, junior partner of said firm, under a pledge to the charterer, who preferred claims against it, that if he, the charterer, "would lend his aid in having the whole matter amicably settled without litigation, that Johnson & Higgins would pledge themselves to act with the strictest impartiality to all parties." Not relying on this pledge, the charterer subsequently made a demand on Johnson & Higgins for the freight; but they having advanced $46,805.31 to take up the bottomry-bond, declined to give up the freight, which was one of the funds on which they relied to re-imburse themselves. Hence the charterer brought a suit against them, and they employed counsel to defend it; that is, to defend their collateral security. It was indifferent to the ship whether Johnson & Higgins or the charterer held the freight during the time the ship was adjusting the charterer's claim.

98 Sixth. Because the commissioners have allowed, as a claim against the vessel, the sum of $500, paid by the libellants to E. A. Hammond, the mortgagee, for "petty disbursements." The only evidence respecting this claim is as follows: "Of the $500 paid to E. A. Hammond, for petty disbursements, $448.75 were for insurances effected by him on the ship, while in port, by E. A. Hammond, the mortgagee in possession, and one or two small items; or for $500 paid by him for counsel-fees, on account of his interest in the ship as mortgagee in possession."

By the terms of the mortgage, the mortgagee is authorized to keep the ship insured, and the money paid for that purpose "shall be deemed to be secured by these presents, and shall be enforced and collected in the manner as above mentioned." The ship was sold at public sale to satisfy the mortgage on the 4th of December, 1867. The insurance, then, was effected prior to that date, for after the sale of the ship Hammond had no insurable interest, and hence the premium must have been tacked to the mortgage, and satisfied along with it, by the sale of the ship. This sum of $500 was advanced to Hammond, the mortgagee, a month after Hammond's interest in the ship had been sold; that is, January 3, 1868.

The commissioners erred, therefore, in allowing this claim; because, if Hammond paid the money to insure the ship, his claim was discharged by the sale of the ship; if he made the payment for counsel-fees, such payment did not constitute a claim against either the ship or ship-owner. On the ground, too, that the evidence as to the application of the money was uncertain and indefinite, the commissioners should have disallowed this claim.

Seventh. Because the commissioners have allowed the sum of $461.12, paid or alleged to have been paid to ship-keepers; whereas the evidence shows that those men were improvidently employed, there being a sufficient force on board without them, and their employment not being necessary for the benefit of either ship, freight, or cargo—the cargo having been discharged before they were put on board.

Eighth. Because the commissioners have allowed the sum of $461.86, paid for insurance to protect the libellants for their advances, whereas this expense having been incurred solely for their benefit—in no sense for the benefit of ship or freight—should have been disallowed.

Ninth. Because the commissioners have allowed the sum of $200, paid Judge Beebe for professional services in some litigation between master and mariners, whereas upon no hypothesis could such a claim be tacked to the bottomry-bond and constitute a lien on the ship.

99 Tenth. Because the commissioners should have discriminated between the various charges, and tacked to the bottomry-bond only those that constituted a lien against the ship, whereas they have made no discrimination, but have attached to the bond all claims, whether ordinarily liens against the ship, or under the special circumstances of this case only constituting a personal claim against the owner.

Eleventh. Because the evidence shows that Johnson & Higgins were the agents of the ship-owners, acting as such for a stipulated compensation under a previous arrangement, and any balance of accounts in their favor would not constitute a claim against the vessel.

HENRY FLANDERS.
Proctor for Respondents.

MARCH 26, 1869.

Order of court.

JULY 3, 1869.—The case recommitted, that the former commissioners, or either of them, may report a reconciling statement of the amount due by their report, according to the standard of the pro forma calculation in the exceptions of Mr. Flanders.

Commissioners' report on the recommitment.

To the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania.

JOHNSON & HIGGINS
v.
SHIP BELLE OF THE SEA. } In admiralty. Bottomry.

The undersigned, to whom was recommitted the report of commissioners of 19th March, 1869, and the accounts and statements of the respective counsel in the case, with a view to reconcile existing differences, having carefully gone over all the statements, begs leave to report that in the commissioners' statement of the above date an error of $222.72 exists in the freight's proportion of general average, and also a clerical error in the commissions allowed by the commissioners of $68.88. The correction of these errors reduces the balance due on the bond from $4,897.53 to $4,605.93. The libellants,

100 through Mr. Higgins, have presented a reconciling statement, showing the above corrected balance, while an account based on the theory as adopted by Mr. Flanders, for the respondents, shows a similar balance. 'Tis true that Mr. F. objects to an interest charge of $403.78, but I respectfully submit that this can be clearly shown as correct, as it refers directly to the account and statement of Mr. Higgins, as also to the commissioners' statement, and cannot be otherwise than charged, in any account, based upon, and entirely dependent on, the accounts referred to.

In the report of March 19th, the commissioners referred, for the opinion of the honorable court, a charge of $986.93, commissions against the ship. The court having allowed the ship one-half, or $493.46, re-

duces the amount due on the bond, as above stated, to $4,112.47. This balance, with the interest at 7 per cent. per annum from Oct. 28, 1867, to July 1st, 1869, makes total amount due, as per statement herewith, $4,769.37.

Respectfully submitted.

JOHN H. YOUNG,
Commissioner.

PHILAD'A, *July 3d*, 1869.

Freight statement.

The amount of freight on the voyage was...	$34,112 90	
Less Stevens', the charterer, freight uncollected	551 48	
	$33,461 42	
Deduct freight's proportion corrected of general average	2,200 03	
		$31,261 39
Add the proportion of freight made good in general average	$84 39	
Add amount collected on freight's policy of insurance	223 22	
		307 61
		$31,569 00

CR.

By amount of disbursements in New York	$5,547 32
Net amount of freight carried to "statement of bond"..	$26,021 68

Statement of bond.

Ship's proportion of the bond		$31,362 73
Commissions corrected and allowed by the commissioners	$942 73	
Half counsel-fee paid Messrs. Man & Parsons..	175 00	
		1,117 73
		$32,480 46

101 CR.

Brought forward		$32,480 46
By net amount of freight, as per statement..	$26,021 68	
" " insurance collected on ship's policy	1,022 51	
By net amount of wages collected in general average	1,841 34	
	$28,885 53	
Deduct the insurance to cover advances	$461 86	
Deduct damage to cargo in handling.	197 37	
Deduct ship's proportion of adjusting fee	351 77	
	1,011 00	
		27,874 53
Balance due on bond, (as corrected by commissioner)....		$4,605 93

Deduct commissions as allowed by the court, one-half of $986.93		493 46
Amount due on bond, without interest		$4,112 47
Interest on ship's proportion of the bond, from October 26, 1867, to October 28, 1867—13 days—at 7 per cent	$79 56	
Interest on the balance due on bond, $4,112.47, from Oct. 28, 1867, to July 1, 1869—20 months and 2 days—at 7 per cent	577 34	
		656 90
Balance due July 1, 1869		$4,769 37

Johnson & Higgins' reconciling statement referred to in commissioners' amended report.

SHIP BELLE OF THE SEA.

Gross items.	Totals.	Cargo's proportion.	Freight's proportion.	Vessel's proportion.	Vessel's am't as amended by commr's.
Bottomry-bond as paid	$46,805 31	$13,610 63	$1,831 95	$31,362 73	$31,362 73
Disbursements at New York, as scheduled by commissioners	5,547 32			5,547 32	5,547 32
Insurance of all kinds:					
1. As per adjustment, covering all interests	376 25	121 57	14 06	240 62	461 86
2. Additional insurances on vessel only	221 24			221 24	
Interest on disbursements:					
1. As per adjustment until settlement	561 17	264 09	21 90	275 18	Int. acc'd hereafter.
2. Additional as paid by cargo	117 79	117 79			
Commissions of all kinds:					
1. On bottomry-bond, (per statement)	1,281 53	351 66	45 80	784 07	392 03
2. For collecting general average, as realized	715 67	505 93	83 54	126 20	63 10
3. On New York disbursements	138 68			138 68	69 34
4. For collecting freight	836 52			836 52	418 26
Amount allowed for damages to cargo	1,116 13	823 51	92 25	197 37	197 37
Freight allowed on same account	114 38	*84 39	*9 76	not charged.	
Wages and provisions, amended	2,495 60	†1,841 34	†212 96	not charged.	
Carried forward		$17,720 91	$2,315 23		$38,512 01
102 Brought forward		$17,720 91	$2,315 23		$38,512 01
Shope's bill, $150. Adjustment fee and average bond, $1,250	1,400 00	940 70	107 53	351 77	351 77
Half of Man & Parson's fee	175 00				175 00
Less amount due and paid cargo in settlement		$18,661 61	$2,422 75		$39,038 78
Balance in hand		1,116 13			
		17,545 48			
Whole freight in hand		33,461 42			
*Made good in statement by cargo and freight		94 15			
Collected for insurers		223 22			
			33 778 79		
Balance of freight to C'r			$31,356 04		
Balance of freight applied				31,356 04	
†Wages and provisions from cargo and freight				2,054 30	
Collection from insurers on vessel				1,022 51	
					34,432 85
Correct amount due Johnson & Higgins, without interest					$4,605 93
Error in commissions				68 88	
Amount added for freight made good				9 76	
Amount added for wages and provisions paid by freight				212 96	
					291 60
Amount originally reported by commissioners					$4,897 53

Interest account.

		Interest Dr.
	The total vessel's indebtedness was due:	
$31,362 78	Bond October 16, 1867. Interest to July 1, 1869	$3,750 46
5,547 32	Other disbursements as follows, say October 28, 1867, to July 1, 1869	650 42
2,128 73	Other items averaging December 1, 1867. Interest to July 1, 1869	235 93
$39,038 78	*Total Dr.*	$4,636 81
	The receipts were:	
$31,356 04	Balance of freight, (on the theory of commissioners must retrovert to Oct. 28, 1867,) to July 1, 1869	$3,676 50
2,054 30	Wages and provisions due when settlements with cargo were completed, January 27, 1868, to July 1, 1869	205 32
1,022 51	Insurance collections on vessel, March 31, 1868, to July 1, 1869	89 47
$34,432 85	*Total Cr.*	$3,971 29
$4,605 93	Equalizing above Dr. and Cr. interest, this balance bears with it interest of $665.52,	
665 52	which is up to July 1, 1869.	
$5,271 45	*Total amount of award as of July* 1, 1869.	

Account on Mr. Flander's theory.

Johnson & Higgins.

Receive	Bottomry-bond		$46,805 31
	Disbursements in New York		5,547 32
	Insurances of all kinds		597 49
	Interest paid by cargo and freight, per adjustment and statement		403 78
	Commissions paid by cargo and freight, per adjustment and statement		986 93
	Half commission on vessel's share		942 73
	Shope's bill and adjustment fees		1,400 00
	Half of Man & Parson's fee		175 00
			$56,858 56
103	Brought forward		$56,858 56
Pay	Collection from cargo	$17,545 48	
	Gross freight received	33,461 42	
	Collections from insurers on freight	223 22	
	" " " " cargo	1,022 51	
			52,252 63
	Balance without interest		$4,605 93
	Interest, as per interest account		665 52
	Total amount due Johnson & Higgins		$5,271 45

Case of the Belle of the Sea.

By the court, 25th November, 1870.

The decree will be for the libellants, for the lesser of the two amounts reported by the commissioners, with New York interest, deducting such credits, if any, of cash since paid by the respondent, or received by the libellants on account of their demand from other sources, as may be vouched in the clerk's office before Monday next. The decree will be entered on that day, unless the respondent shall, in the mean time, file an interrogatory for disclosure by the libellants, on oath, of any receipts of cash since the report from securities held by them.

The reasons of the commissioners do not fully cover the amounts of the expenditures, which are allowed to the libellants by them. But

I am of opinion that the court has jurisdiction, to the full amount, independently of those reasons which, so far as they extend, are sound and applicable. The independent reason is, that the whole demand, though an ulterior, is not too remote a consequence of a maritime necessity, and is thus cognizable in a court of maritime jurisdiction.

The decree must be without costs. If the libellants had properly and reasonably prepared and exhibited the statements and accounts which, through the relation assumed by them, they should have exhibited, the litigation might not improbably have been prevented, and the subsequent confusion as to credits claimed obviated. Moreover, their charges as a dispacheur, though liberally admitted to their full amount, are of such an amount as for the interests of trade and navigation ought not to receive judicial encouragement. The costs, except so far as heretofore or hereafter otherwise paid by the libellants, will be chargeable upon the amount decreeed.

104 In the district court of the United States for the eastern district of Pennsylvania. Sitting in admiralty.

JOHNSON & HIGGINS
v.
SHIP BELLE OF THE SEA.

Answers of plaintiffs to the interrogatory filed on the part of respondents, under the order and decree made November 25, 1870.

Henry W. Johnson, being duly sworn, says: I am one of the firm of Johnson & Higgins, libellants in the above-entitled cause. The libellants have not, nor has either of them, received any amount of money since the above-entitled suit was instituted on account of any securities, policies of insurance, or claims of any kind or nature whatsoever that have been placed in their or either of their hands at any time by the owners of said vessel, or by any persons acting as their agents or succeeding to their rights by purchase of said vessel, nor have any sum or sums of money come into their or either of their hands from any source by reason of their adjusting the affairs of said vessel on her arrival at New York on the 13th day of October, 1867, and since this suit was instituted, except as fully stated and set forth in the accounts, statements, and schedules heretofore made and filed and put in evidence in the cause, and credited and allowed for in the report of the commissioners appointed by the court.

HENRY W. JOHNSON.

Sworn to before me this 13th day of December, 1870.
[COMMISSIONER'S SEAL.] EDWARD L. OWEN,
United States Commissioner for the Southern District New York.

105 X.

Final decree.

D. C. U. S. E. D. of Penn'a. In admiralty.

JOHNSON & HIGGINS
v.
THE BELLE OF THE SEA.

And now, to wit, January 3, 1871, the respondents having, on the 26th day of November, A. D. 1870, under the order made by the court

Nov. 25, 1870, filed an interrogatory for disclosure by the libellants on oath of any receipts of cash since the report of the commissioners from securities held by them, and the libellants having, December 15, 1870, filed their answer to said interrogatory, denying, on oath, that they had received any moneys on account of said Belle of the Sea, except such as had been credited and allowed for in the report of the commissioners, it is ordered, adjudged, and decreed that the respondents do pay to the libellants the sum of $5,271.99, being the lesser of the two amounts reported by the commissioners, with N. Y. interest from July 1st, 1869, to date.

As to costs, the application of the concluding sentence of the court's opinion of 25th November last will be understood as limited to the libellants' own costs, and not as requiring them to pay the whole or any part of the defendant's costs.

106 It is agreed that the annexed printed book of 105 pages, with index, shall be certified by the clerk of the district court to the circuit court of the United States, as the record upon the appeal in the case of Johnson & Higgins vs. Ship "Belle of the Sea," in admiralty.

April 1st, 1871.

SAMUEL C. PERKINS,
Proctor for Libellants.
HENRY FLANDERS,
Proctor for Respondants.

107 UNITED STATES,
Eastern District of Pennsylvania:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States in and for the eastern district of Pennsylvania, with the original agreement of the proctors and advocates of the respective parties that the same shall constitute the record on appeal in a certain plea, civil and maritime, for damages, contract therein lately depending, wherein Henry W. Johnson and Andrew Foster Higgins, copartners under the firm of Johnson & Higgins, were libellants, against the ship "Belle of the Sea," and Joseph Nicholson and Company, respondents.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court *of* Philadelphia, this fourth day of April, A. D. 1871, and in the ninety-fifth year of the Independence of the said United States.

[SEAL.] CHARLES S. LINCOLN,
Pro. Cl'k Dist. Court U. States

108 And afterwards, to wit: On the first day of April, in the year of our Lord one thousand eight hundred and seventy-two, in our said circuit court, here, after argument, it is ordered, adjudged, and decreed that the libellants do recover from the respondents the sum of five thousand two hundred and seventy-one $\frac{99}{100}$ dollars, with New York State interest from July 1st, 1869, with costs in circuit court, but not in district court.

109 Whereupon afterwards, to wit, on the eighth day of April, in the year last aforesaid, Henry Flanders, esquire, proctor for the respondents, prays an appeal from the decree of this court to the Supreme Court of the United States, which is allowed.

And afterwards, to wit, on the eleventh day of the month and year last aforesaid, it was ordered by the court that the decree be changed

in so much as to make the interest on amount decreed to date from January 3rd, 1871, instead of July 1st, 1869.

110 Know all men by these presents that I, Artemus Partridge, of the city of Philadelphia, am held and firmly bound unto Henry W. Johnson & Andrew Foster Higgins, both of the city and State of New York, copartners under the firm of Johnson & Higgins, in the full and just sum of ten thousand dollars, to be paid to the said Johnson & Higgins, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents, sealed with my seal and dated this twelvth day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a circuit court holden at Philadelphia for the eastern district of Pennsylvania, in a suit depending in said court

111 between Johnson & Higgins, libellants, and ship "Belle of the Sea" and owners, respondents, a decree was rendered against the said respondents, and the said respondents having obtained leave to appeal therefrom, and filed a copy thereof in the clerk's office of the said court, to reverse the said decree in the aforesaid suit, and a citation directed to the said Johnson & Higgins, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such that if the said respondents shall there said appeal to effect, and answer all damages and costs, if thy fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

A. PARTRIDGE. [SEAL.]

112 Sealed and delivered in presence of—
HENRY FLANDERS.
W. GRIER HIBLER.

113 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain appeal therein lately depending between Johnson & Higgins, libellants, and the ship "Belle of the Sea" and owners, respondents.

114 In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia this twenty-sixth day of October, A. D. 1872, and in the ninety-seventh year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk, &c.

(Indorsement on cover:) No. 313. The "ship Belle of the Sea," Arthur Spear, master & claimant, &c. vs. appellants Henry W. Johnson and Andrew F. Higgins. E. Pennsylvania C. C. U. S. Filed 3d December, 1872.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 41. OCTOBER TERM, 1874.

THE SHIP "BELLE OF THE SEA," SPEAR, MASTER AND CLAIMANT, ETC., APPELLANT,

vs.

JOHNSON & HIGGINS, LIBELLANTS, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Collins, Printer.

In the Supreme Court of the United States.

No. 41. October Term, 1874.

The Ship "BELLE OF THE SEA," SPEAR, Master and Claimant, etc., appellant,

vs.

JOHNSON & HIGGINS, libellants, appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Pennsylvania.

APPELLANT'S STATEMENT OF THE CASE.

The ship "Belle of the Sea" arrived at New York from Calcutta, on the 13th of October, 1867. On the voyage she encountered heavy gales, sprung a leak, and was compelled to put into the Mauritius for repairs. The funds necessary to meet the ship's necessities at the Mauritius were borrowed on bottomry; the amount of the bond in American currency being $46,805 31. The bond covered the ship, the cargo, and the freight. There was also a mortgage on the ship for about $25,000; and on her arrival in New York the mortgagee took possession, and, together with the mortgagor, employed as agents to adjust the ship's affairs, the firm of Johnson & Higgins, the appellees. They were employed upon an express agreement to collect the funds belonging to the ship, whether arising out of freight, general average, or insurance, and with

these funds to extinguish the lien of bottomry. In the process of settling and adjusting the ship's affairs, complications arose. The charterer had made large advances to the ship on account of freight, and claiming that the bottomry bond only covered the freight less these advances, he commenced a suit against Johnson & Higgins for the freight moneys in their hands. At this stage of the transaction Messrs. Jos. Nickerson & Co. were negotiating for the purchase of the ship. Wishing to ascertain the precise liabilities of the ship, the senior member of the firm called at the office of Johnson & Higgins, and in an interview with the latter was assured that if the claim of the charterer against the freight was paid, there would be a balance in the hands of Johnson & Higgins, in favor of the ship, of $3000. On the faith of this assurance, Messrs. Nickerson & Co. paid the charterer's claim and bought the ship. It subsequently appeared that Johnson & Higgins were unable to realize from insurances on the ship the amount they had anticipated, and the result was, that after paying the bottomry bond and sundry liabilities contracted in New York, out of the freight, general average, and such insurance money as they had collected, there was still an unpaid balance in their favor; this balance being mainly, if not wholly, for their services and commissions. Instead of resorting to their principals for payment of this balance, they commenced proceedings against the ship, upon the pretence that the bottomry bond, which had been long since paid, under the agreement heretofore mentioned, still constituted an existing lien against the ship.

BRIEF OF ARGUMENT.

First. The learned Judge of the Circuit Court admits, that if there was an express or implied agreement on the part of Johnson & Higgins, the appellees, to pay the bond on the faith and credit of the freights, general average, and insurance, exclusively, the lien of bottomy was extinguished, and the proceeding against the ship cannot be maintained.

(1.) What then is the fact? Upon this point the testimony is clear and explicit. It is contained in the statement of Edward Kimball and John R. Kimball (Record, p. 63), sons of the mortgagor, who were present at the interview between the latter and Mr. Higgins, when the agreement referred to was made. Their statement is as follows:—

"Mr. Higgins *proposed to pay the bond for Mr. Kimball if Mr. Kimball would give him adjustments of claims against companies.* He said that he would not charge any commission for payment of bottomy bond, as he would not be out of that money more than a day or two, as he intended to require payment immediately, and before delivery of cargo, of all charges on cargo, naming the freight and general average thereon; that there were not many owners of cargo, and that they were very earnest to get their goods, several had called, and they would pay any moment the entire freight and estimate of general average on cargo. Mr. Higgins estimated the freight at about $34,000, and the general average on cargo at $20,000, which would more than pay bottomry bond and disbursements on crew inwards, etc. This was all verbally agreed to by both parties, and Mr. Higgins was requested by Mr. J. R. Kimball to have the agreement reduced to writing, but Mr. Higgins objected that he did not want it in writing, as his

heretofore mentioned, acquired no lien on the ship for fees and commissions, or for any disbursements made in New York.

(1.) There is no lien in the admiralty for fees and commissions.

(2.) And, if there were any other items in the present claim besides fees and commissions, they are not liens upon the vessel. On the doctrine of Minturn *v.* Maynard, 17 How. 477, the libellants, as agents, must proceed in *assumpsit* against their principals. In admiralty they have no remedy either *in personam* or *in rem*. On the general doctrine, too, they have no remedy *in rem*, because the owner was present, and, the legal presumption is, that the credit was to him and not to the ship. On this latter point the testimony of Mr. Higgins is irresistible. He says (Record, p. 18): "All the disbursements and expenses on account of the vessel, after her arrival in New York, were contracted by E. A. Hammond as mortgagee in possession, and paid by us on bills certified by him to be correct, &c." And this mortgagee, thus in possession, was a man of means, and in good credit. (Record, p. 19.)

The learned Judge erred, therefore, in holding, under the circumstances of this case, that it was distinguishable from Minturn v. *Maynard, supra, and that the agents, Johnson & Higgins, had a remedy in rem for a balance of accounts in their favor.*

HENRY FLANDERS,
Of Counsel for Respondents.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 41. October Term, 1874.

THE SHIP "BELLE OF THE SEA," ARTHUR SPEAR, MASTER AND CLAIMANT, &c., *Appellant*,

v.

HENRY W. JOHNSON, AND ANDREW F. HIGGINS, LIBELLANTS, *Appellees.*

Appeal from the Circuit Court of the U. S. for the E. D. of Pa.

BRIEF FOR APPELLEES.

SAMUEL C. PERKINS,
Of Counsel.

HENRY B. ASHMEAD, Book and Job Printer, 1102 & 1104 Sansom Street, Philadelphia.

In the Supreme Court of the United States.

No. 41, October Term, 1874.

The Ship "Belle of the Sea," Arthur Spear, Master and Claimant, &c., *Appellant*,

v.

Henry W. Johnson and Andrew F. Higgins, Libellants, *Appellees.*

Appeal from the Circuit Court of the United States, for the Eastern District of Pennsylvania.

APPELLEES' STATEMENT OF THE CASE.

The captain of the ship "Belle of the Sea," July 16, 1867, at Port Louis, in the Island of Mauritius, executed to Houdlette & Perkins, a Bottomry Bond on ship, cargo and freight, for $29,444\frac{95}{100}$, gold, payable with maritime interest at $13\frac{1}{2}$ per cent., within ten days after the ship's safe arrival at New York (Record, 6–8).

The validity of this bond was not disputed. It was endorsed by the lenders to Baring, Bros. & Co., of London, who endorsed it August 17, 1867 to S. G. & G. C. Ward, of New York, in whose hands it was on the arrival of the ship, October 13, 1867 (Record, 8, 9, 14). The libellants, Johnson & Higgins, average-adjusters and insurance-brokers in New York, had been employed by Hammond, the holder of a mortgage against the ship then long past due, to take up the bottomry bond, and attend generally to the business of the ship on her arrival (Record, 14). Edward Kimball, the owner of the ship, was unable to take up the bond, and finally on the 16th of October, libellants, under

instructions from Hammond, paid the Wards $46,805 31, the value of the bond in currency, and the Wards then endorsed it to libellants without recourse (Record, 15, 19, 24, 25, 9). An understanding was arrived at prior to the bond being taken up, by which the libellants were to collect the freight, and attend to the whole business of the ship. The owner (Kimball), and also the charterer Stevens, consented (Record, 15). Libellants accordingly went on and managed the business of the vessel, collecting the freights, and having the disbursements for port charges and other expenses on account of the vessel made for them by Hammond the mortgagee (Record, 15, 18). These disbursements amounted to $5,547 32 (pp. 23, 24, 70); and the average adjustment having been prepared by libellants, it appeared that the net amount realized from the freight fell short of meeting the amount due by the ship on all accounts by $6,409 82 (Record, 9, 10), for which amount as a balance due on the bottomry bond, the libellants claimed to hold the ship. The libellants deposited the freight money as collected in their general bank account; there was no distinct deposit of the freight money. A suit having been commenced against them by the charterer for the freight moneys, they loaned out the whole amount on call, and charged themselves with the interest received.

Before the adjustment was completed and the position of the ship's business definitely ascertained, the vessel was sold December 4, 1867, at public sale in the City of New York under Hammond's mortgage, and purchased in the name of J. W. Arnold (Nickerson's own testimony, Record, 16), who on the 6th of January, sold her at private sale to Joseph Nickerson & Co., on behalf of whom and others to whom they subsequently transferred part interests, the claim was interposed in the present case by Spear, who was the master at the time the libel was filed.

Notice of the claim of libellants against the ship was given on their behalf at the public sale (Record, 21, 22). Nickerson alleges that before he bought the ship from Arnold he had an interview with libellants, in which they assured him that if cer-

tain claims of the freighters were paid there would be a balance of some $3000 in their hands belonging to the ship, and that on this assurance he bought the ship and paid the freighters' claims (Record, 39). But this is expressly denied by Higgins, one of the libellants (pp. 16, 17), and is contradicted by Krebs, a disinterested witness (pp. 30, 31).

The vessel having been removed by Nickerson & Co. from New York to Philadelphia without the knowledge or consent of libellants, and in violation of an understanding between themselves and Snow and Burgess, who were acting for the owners (Record, 17, 18, 21), and Nickerson & Co. refusing to settle, the libel in the present case was filed in the District Court for the Eastern District of Pennsylvania, May 23, 1868, to recover the balance due on the bottomry bond, upon which the vessel was attached but released upon stipulation (Record, 2, 3).

Nickerson & Co. intervened as owners, and filed their answer September 21, 1868, in which by way of plea they set up (Record, 9); (*a*) That the proceeding was in fact to enforce payment of an alleged balance of accounts between libellants and the former owner of the ship; (*b*) That no credit was given to the ship for payments or advances made on account of the same; (*c*) A large portion of the items in libellants' account never were, and under no circumstances could, constitute an implied lien on the ship; (*d*) That if any such lien existed with regard to another portion of such items, it had been waived by libellants permitting a sale of the ship, and at the same time assuring the purchasers (respondents) that they claimed no lien against her, but, on the contrary, would have a balance in their hands in favor of the ship or her owners, and that respondents purchased the ship on the faith of such assurance; and denied the jurisdiction of the court.

October 20, 1868, the District Court refused the application to dismiss for want of jurisdiction, but without prejudice to the right of respondents to the benefit of the objection at any stage of the proceedings, and referred the case to "Commissioners to ascertain and report what amount remains due upon the bottomry bond by the vessel, according to the ordinary course of

adjustment and settlement of such questions; leaving open for subsequent consideration all questions depending upon express or implied conventional arrangement or acquiescence of parties, and all questions of right of the respondents as purchasers for value without notice" (Record, 63, 64).

Much testimony was taken pending this reference, and the Commissioners filed their report March 29, 1869, with exceptions presented on behalf of the respondents (Record, 64). The Report was referred back to the Commissioners to report a reconciling statement (Record, 73). The Report on the recommitment was filed July 6, 1869, in which certain errors in the former report were corrected.

This report was confirmed by the Court, November 25, 1870, and a decree ordered for libellants but without costs (Record, 76), and on 3d January, 1871, a final decree was entered for libellants for the sum of $5271 99, being $4769 37, the amount reported due by the Commissioners in their report upon recommitment, with New York interest at seven per cent., from the date of the report, July 1, 1869, to the date of the decree, and without costs (Record, 77, 78).

The Commissioners in their report (Record, 64), proceeded on the principle that "the proper adjustment of the accounts can only be arrived at by ascertaining the net freight collected by Johnson and Higgins (libellants) from the voyage in question, and appropriating the same, and the amounts collected from insurance and other sources on account of the vessel in payment of advances; the balance will show the amount remaining due against the vessel on the bottomry bond." And they stated first an account of the freight, deducting the charges necessary to its collection, the port charges and all incidental expenses usually settled by the owners out of the freight (Record, 64).

The final statement of account prepared by the Commissioners (Record, 74), shows that for disbursements and expenses they deducted from the net freight collected $5547 32, the items of which appear in detail (Record, 23, 24, 70).

By allowing libellants to reimburse themselves for these dis-

bursements and expenses out of the freight moneys, it reduced the amount to be credited on account of the bond, and left a balance due on the latter, which was found by the Commissioners as above stated.

The learned Judge of the District Court in the interlocutory decree of 25th November, 1870, while he fully agreed with the Commissioners in respect to the principles upon which they based their report, yet went further and asserted the jurisdiction of the Court upon "the independent reason that the whole demand, though an ulterior, is not too remote a consequence of a maritime necessity, and is thus cognizable in a court of maritime jurisdiction."

An appeal was taken by respondents to the Circuit Court, when after argument a decree was entered April 1, 1872, in favor of libellants for the same amount as had been decreed in the Court below, to wit, $5271 99 together with New York interest from January 3, 1871, with costs in the Circuit Court but not in the District Court (Record, 78, 79). The amount at the date of the decree would be $5731 25.

As the decree was entered before the amendment to the 8th Rule of this Court was promulgated, April 28, 1873, requiring a copy of the opinion filed in the case, to be annexed to and transmitted with the record, the opinion of the Circuit Judge is herewith printed and respectfully referred to by the libellants.

McKennan, Cir. J.—The District Court rendered a decree in favor of the libellants, and the respondent now seeks to reverse it on the ground, that the advance made by the libellants extinguished the lien of the bottomry bond—the freights, general average and insurance only being pledged for their reimbursement, and that by their representations to the purchaser of the vessel they are estopped from asserting their lien upon it.

The captain of the Belle of the Sea executed at Port Louis, in the Island of Maritius, to Houdlette & Perkins a bottomry bond of $29,444$\frac{05}{100}$, gold, payable within ten days after the safe arrival of the ship at New York. The validity of this bond

is not contested. Upon the arrival of the ship at New York, therefore, a lien for the sum stated, in favor of the bottomry creditor, attached to the ship and her cargo, according to the stipulation of the bond. The bond passed into the hands of Baring Bros., by whom it was duly assigned to S. G. & G. C. Ward, and by them to the libellants, in consideration of the payment of $\$46{,}805\frac{31}{100}$, its currency value. The libellants thus became apparently bonâ fide holders of it, and entitled to the security of its lien. But the respondent alleges, that this lien was released or extinguished by an agreement by the libellants with the owner of the ship that they would take up the bond and look only to the freight, general average and insurance for their reimbursement. This he is plainly bound to prove. I think he has failed to do it.

It is evident that the libellants had proposed to the agents of the Barings, to pay the bond and take an assignment of it, before they had any interview with Edmund Kimball, the owner of the ship. Their occupation was that of adjusters of averages, and they were doubtless desirous to be employed in that capacity in reference to this ship. Whatever estimate they may have made of the comparative resources and liabilities of the ship, whatever assurances they may have given as to their ability to marshal and adjust them for the best interests of the owner, these are to be considered as reasons suggested for their employment, rather than as importing a stipulation that they would accept such resources as their sole security for reimbursement. Proposing to pay the amount of the bond and to take an assignment of it, it is improbable that they intended to forego the certain security thus afforded them, and depend upon the problematical sufficiency of the ship's credits to return their large advances. Admitting that they were the agents of the ship owner, the payment of his debt with their own money would not work a satisfaction of the debt or an extinguishment of the security for it. By the assignment of the bond they took the place of the bottomry creditors, and there is no incompatibility in the rights to which they thus succeeded and their duties and obligations as agents of the debtors. Certainly

there is no implication, in equity at least, that by becoming agents of the debtor they thereby surrendered or lost any of their securities as creditors. Admitting further, that they paid the bond in pursuance of an arrangement with the owner to that effect, still the debt with its incidents subsisted and would only be discharged by payment in money or some other conventional mode. The respondent's defence really concedes this much. For he does not allege that the bond itself was satisfied, but only that it it is not a lien upon the ship, because the libellants paid it on the faith and credit of the freights, general average and insurance exclusively. But such conclusion can only result from an express or implied agreement to that effect. That the libellant expressly agreed to take up the bond and forego its lien does not appear in all the proofs, nor is it to be inferred from the fact of their agency, or from an agreement to take it up with their money and to adjust the liabilities and marshal the resources of the ship for the best interests of her owner.

It is to be observed that, at the time the bond was transferred to the libellants, it was a valid lien upon the ship, and the only question is whether, by any arrangements with the owner, they are disabled from enforcing it. Thus this case is distinguished from *Minturn* v. *Maynard*, 17 How. 477, relied upon by the respondents' counsels, where there was no maritime contract, but where an agent invoked the jurisdiction of admiralty to recover a balance of account for money expended in paying for supplies, repairs and advertising of a steamboat, furnished on the personal credit of his principal, and not on the credit of the boat.

If the libellants represented to the respondents, that if certain claims of the freighters were paid, there would be a balance in their hands in favor of the ship, or her owner, and he thereupon paid these claims and purchased the ship, they could not maintain this suit. But this is a fact which it devolves upon the respondent to prove. The proof of it rests upon his unsupported testimony. It is distinctly and positively denied by the libellant, Higgins, who is alleged to have made the representa-

tion. Thus affirmed by one party, and denied by the other, it cannot be considered as established, and the estoppel, which rests upon it, necessarily fails.

The District Court rightfully sanctioned the application of of the freight money to the payment of the unsecured disbursements of the libellants, leaving the surplus only to be credited on the bottomry bond. So applying it, with the other proper credits, the sum of $\$5271\frac{99}{100}$ remains unpaid on the bond. For this amount, with New York interest from July 1, 1869, a decree will be entered in favor of the libellants, with costs in this Court, but without their costs in the District Court.

BRIEF OF ARGUMENT FOR APPELLEES.

There can be no question but that upon the arrival of the ship in New York, there was a lien in favor of the bottomry creditor against the ship; nor that the holder by endorsement, in the absence of any special circumstances of exception, was entitled to enforce the bond in his own name and to all the benefit of the lien: *The Rebecca*, 5 Rob. Adm. 102, 104: *The Prince of Saxe Coburg*, 3 Hagg. Adm. 387; s. c. as *Soares* v. *Rahn*, 3 Moore P. C. 1; *The Osmanli*, 3 Rob. Jr. 198; *The Mary Ann*, 4 Notes of Cases, 379.

Primâ facie therefore, libellants as holders of the bond by endorsement, were entitled to enforce it against the ship.

But appellants contend that libellants have been paid the amount of the bond under the arrangement by which they collected the freight moneys, general average and some portion of the insurances, and even if they were not actually paid, yet they are estopped from denying payment, because of representations which it is alleged they made to respondents, by which the latter were induced to become purchasers of the ship for a valuable consideration (Respondents' plea, Record, 9).

As to the alleged payment; while the amount of the freight moneys, general average and insurances collected by the libel-

lants was *equal to* the amount due on the bond, yet a portion of these moneys was applied, and rightfully applied, to the payment of certain disbursements and expenses, on account of the ship in New York, by the libellants, which reduced the amount *applicable towards* the bond. The fact of such application and consequent reduction appears very clearly from the account and statement which forms part of the final report of the Commissioners, to whom the matter was referred by the District Court to ascertain and report the amount due on the bond (Record, 74). Detailed statement of disbursements (Id. 70, 23).

The rightfulness of such prior application of the freight moneys, &c., depends on the questions whether the disbursements were in themselves proper charges against the ship, and if so, whether the libellants were entitled in law to pay them out of the freight moneys, &c., instead of applying the latter without deduction to the discharge of the ship's liability on the bond.

That these disbursements were proper in themselves, as against the ship, need not be argued in detail. They have been carefully considered and approved by the two lower Courts, aided by a special report of very competent Commissioners. In this immediate aspect of the case it is not a question of maritime contract or lien; but this will be considered hereafter.

The disbursements being proper in themselves, the question arises as to the appropriation of payments. Libellants were not merely the holders of the bottomry bond, but in their capacity as average-adjusters and insurance-brokers (Record, 14, 30), the entire business relating to the ship was placed in their hands, originally by E. A. Hammond, the mortgagee in possession (Record, 14, 30), and subsequently with the cognizance and assent of Kimball, the then owner (Record, 15, 30), and of Stevens, the charterer (Record, 15). And they thus stood in the position of agents of all parties interested, having the collection of all moneys on account of the ship, whether for

freight, general average or insurance, and the adjustment and payment of all claims against her. Conceding for the purposes of the present argument only, that there was no lien against the ship for the disbursements on her account in New York, libellants are to be considered as the holders of two classes of claims, one secured and the other unsecured.

There is no evidence of any specific appropriation by either or any of the parties of the moneys paid to and received by libellants on account of the ship. And the law consequently steps in and applies these payments in the manner most beneficial to the creditor, that is, first to the unsecured claims, and then whatever may remain is applied on account of the secured claims: *Smith* v. *Brooke*, 49 P. S. R. (13 Wright) 147, 151; *Purer* v. *Sweet*, 33 P. S. R. (9 Casey) 157; 2 Parsons on Contracts, 629, 631, 632, and authorities there cited; *Field* v. *Holland*, 6 Cranch 8; *Stamford Bank* v. *Benedict*, 15 Conn. R. 437, 443.

This is in entire accord with the principles of natural justice and equity, and precisely what was done in the present case by both the District and Circuit Courts. The freight moneys were properly applicable in the first place on account of the libellants' claim for disbursements, if these claims are regarded as unsecured.

It may indeed be considered as conclusive, both of the propriety of the disbursements in themselves, and of the appropriation of the freight moneys to the reimbursement of the libellants for their advances on this account, when it is remembered that these disbursements were absolutely necessary to be made in order to ensure the delivery of the cargo, and that the collection of the freight could not be made till the goods were delivered; the payment of these disbursements in advance was in fact a condition precedent to the delivery of the cargo and the collection of the freight.

As to the alleged estoppel, it is true that if respondents were induced by representations made by libellants as to the

condition of the ship's business, to purchase the vessel, and thereby were placed in a worse position than they otherwise would have been, by finding themselves subjected to an unexpected liability on the vessel's account, the libellants would be estopped from denying that the condition of the ship's business was other than they had represented.

But it is indispensable for a party who sets up such an estoppel by way of defence to an otherwise clear liability, to prove affirmatively with a certainty to every intent, and beyond a doubt, and not by way of argument or inference, the facts relied on to constitute the estoppel: Co. Litt. 352 b; *Hill* v. *Epley*, 31 P. S. R. (7 Casey) 331.

And see as to the general doctrines of estoppel, 2 Smith's Leading Cases, Hare and Wallace's Notes, 6th American Edition, 702–706.

In the present case the only evidence to establish the alleged facts which it was contended made out an equitable estoppel, was the testimony of Joseph Nickerson, one of the respondents (Record 39, 47, 54). But he is expressly contradicted and his assertion of what took place at the interview denied by Mr. Higgins, the only one of the libellants he saw on the matter, and whose alleged representations are all that can be relied upon to establish the estoppel (Record, 16, 17). And Nickerson's testimony is further contradicted by Krebs, a disinterested witness (Record, 30, 31, 32). And see Krebs' answer to 7th Interrogatory (Record, 32), where he expressly contradicts Nickerson as to statements alleged (Record, 48, lines 6–9) to have been made by Nickerson to Higgins; and also Krebs' answer to cross-interrogatory 3 (Record, 35), where he expressly contradicts Nickerson as to statements alleged (Record, 54) to have been made by Higgins to Nickerson.

The libellants further contend that their undertaking in respect of the ship, and her business, was a maritime contract, having reference to maritime transactions, or as put by the learned judge of the District Court (Record, 77), their "whole demand, though [as regards the disbursements] an ulterior, is

not too remote a consequence of a maritime necessity," and thus within the jurisdiction of admiralty: *Ins. Co.* v. *Dunham*, 11 Wallace 1, and authorities cited; *The Belfast*, 7 Id. 624; *The Kalorama, The Custer*, 10 Id. 204.

In this last case *Minturn* v. *Maynard*, 17 Howard 477, which was principally relied on by respondents in the Courts below, was doubted on the authority of *The Belfast*, supra; *The Grapeshot*, 9 Wallace 141; *Davis* v. *Child*, Davies Admiralty Rep. 71; *Merritt* v. *Brewer*, 14 Law Reporter 452.

The libellants were not mere agents seeking to hold the ship for a balance of accounts between themselves and the owners, on whose personal responsibility the indebtedness had been contracted, as was the case in *Minturn* v. *Maynard*, supra, but they stood in a peculiar position towards the ship, and all her interests, a position which was the direct consequence of, or forming rather an integral part of the maritime necessity which placed her business in their hands; and this maritime necessity directly led to, or involved the libellants in the necessity for the purpose of protecting the interests confided to their care, of making all the expenditures for which they seek to hold the ship liable, whether as purchasers and holders of the bottomry bond, or for excess of disbursements over receipts in the management and adjustment of the business of the ship.

In any aspect of the case, the libellants it is respectfully submitted, are entitled to an affirmance of the decree of the Circuit Court with New York interest.

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